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Vol. IV
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 21

**WM. H. NEBLETT, VERNON BETTIN, WILLIAM
GEORGE DICKINSON AND ALFRED F. MAC-
DONALD, PETITIONERS,**

vs.

**SAMUEL L. CARPENTER, JR., INSURANCE COM-
MISSIONER OF THE STATE OF CALIFORNIA,
ET AL**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF CALIFORNIA**

PETITION FOR CERTIORARI FILED APRIL 2, 1938.

CERTIORARI GRANTED MAY 16, 1938.

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ration.

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et al.

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Title Insurance Bldg., Los Angeles, Cal.,
Attorney for Respondents Rupert B. Turnbull et
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Cancellable Policyholders Similarly Situated
and for Francis Adams for Himself and for
Other Non-Cancellable Policyholders Simi-
larly Situated.

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 and on Behalf of All Similarly Situated
 Policyholders.*

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A. A. CARMICHAEL,
Montgomery, Alabama,
*Attorney for Respondents J. Parker Evans, on
Behalf of Himself and All Other Holders
of Active Life Non-Cancellable Income
Policies Issued in the State of Alabama
Who May Wish to Join With Him in the
Proceeding.*

3421 Questions to Be Asked by the Medical Examiner

(This examination must be made in private by a regularly appointed Medical Examiner, no Agent or other third person being present) In continuation of and forming a part of my Application for Insurance to The Pacific Mutual Life Insurance Company of California.

1. A. Where have you resided during summer and winter of last ten years? A. Caldwell N. J. 1918-1925 Chicago Ill 1925-1928

3422

B. Have you ever changed or been advised to change your occupation or residence to benefit your health? B. No

2. A. Do you drink wine, spirits, malt liquors or other alcoholic beverages? If so, what kinds, how much, and how frequently?

A. No

B. Have you ever used them to excess? (Give particulars.) B. No

3423

C. Have you ever used opium, cocaine or any other drug? C. No

D. Have you ever taken treatment for liquor or drug habit? If so, when and where? D. No

E. If a total abstainer, how long so? E. Always

F. Have you ever engaged in the manufacture or sale of alcoholic beverages? When and how long? F. No

3424 3. A. Has any one in your family committed suicide or suffered from Epilepsy or Insanity? (Details each such case.) A. No

B. Has any one in your family or in your immediate household ever suffered or died of Consumption or any other contagious disease? (Details each such case.) B. No

4. A. Has any Insurance or Assessment Company or Fraternal Society ever refused you Insurance, or limited or postponed your Application? (Details each such case.) A. No

3425

B. Have you ever applied for Insurance without getting the Policy? B. No

C. Have you any other Application now pending? C. No

D. Have you ever applied for a pension or Government Compensation? If so, give the cause for each such claim. D. No

3426 5. Have you ever had or been treated for:

A. Apoplexy, Paralysis, Epilepsy, Dizziness, Mental Derangement? Yes or No A. No

B. Asthma, Shortness of Breath, Chronic Cough, Spitting of Blood? B. No

C. Influenza, Pneumonia, Pleurisy, Bronchitis, Tuberculosis? C. No

D. Disease of Heart or Blood Vessels, Sunstroke, Nervous Prostration? D. No

E. Gastric or Duodenal Ulcer, Indigestion, Appendicitis, Piles, Fistula? E. No

- 3427 F. Liver, Kidney or Bladder Disease, Sugar or Albumin in Urine? F. No
- G. Colic, Gravel, Gall Stones, Jaundice, Malarial or other Fevers? G. No
- H. Cancer, Tumor, Open Sores, Goitre, Enlarged Glands, Skin Disease? H. No
- I. Locomotor Ataxia, Lumbago, Gout, Rheumatism, Syphilis? I. No
- J. Difficulty with Sight or Hearing, Discharge from the Ear? J. No

- 3428 K. Have you ever had a surgical operation?
- K. Yes. Give name, history, date and duration of each disease, symptom or operation. My tonsils were removed in 1921—Dr. Lynch Polyclinic Hosp., New York. I had a septum operation in 1920.

6. Have you given full information about each disease, symptom or operation mentioned in Question 5 above, which you have ever had or been treated for? Yes

- 3429 7. What injuries or illnesses, or treatments by or consultations with physicians or practitioners, have you had during last seven years?

Give particulars each
Illness, Injury, Consul-
tation or Treatment

Date Duration Result

Physician's Name
and Address

Correction of deviated septum

1920

Short

Cured

Dr. Wheeler
Jersey City, N. J.

La Grippe & Cold

1923

Few
days

Cured

1st degree burns right index
finger

1927

1 day

Cured

8. Has your weight in past year—Increased?
No Diminished? No How much? No
lbs.

3430 9. Are you now in good health? Yes.

	Age if	State of Health; if not good, give	Age at	Cause of Death; give	Date of	How long
10. Family Record?	Living	full details	Death	full details	Death	sick
Father			70	Typhoid- Peritonitis	1920	Short
Mother			56	Cancer of Uterus	1913	1 yr.
Wife or Husband	35	Good				
Brothers	Number living (2)	47	(half)	Good		
	Number dead (0)	37	Good			
	Number living (1)	44	(half)	Good		
Sisters	Number living (1)	44	(half)	Good		
	Number dead (0)					

3431

Dated at Chicago Ill this 13th day of January
1928

Witness William D. Joch M. D.

Medical Examiner

Earle B. Tilton

Applicant's own signature in full

Answers must be explicit and in the handwriting of the Examiner. Check marks or dashes do not constitute an answer

3432

Endorsed: Received copy of the within answer this 15 day of October, 1936. U. S. Webb, attorney general; John L. Flynn, deputy attorney general; Frank L. Guerena, Mitchell, Silberberg & Knupp, by Perry Price, deputy, attorneys for petitioner.

Filed Oct. 15, 1936, 3:45 P. M. L. E. Lamp-ton, county clerk; by K. E. Lynch, deputy.

3433 [TITLE OF COURT AND CAUSE.]

Return to Order to Show Cause by the Respondents Rupert B. Turnbull, William Weisman, Francis Adams, and Lawrence Allen.

Come now Rupert B. Turnbull, William Weisman, Francis Adams and Lawrence Allen, for themselves and for other non-cancellable policyholders similarly situated, and for a return to the respective orders to show cause of date

3434 August 13, 1936, signed by the Honorable Henry M. Willis, judge of the above entitled court, to the order to show cause with respect to the rehabilitation, sale and transfer of assets and reinsurance plan and agreement, order to show cause on which is dated August 14, 1936, signed by the Honorable Henry M. Willis, judge, and with respect to the proposed rehabilitation, sale and transfer of assets and reinsurance plan and agreement of Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California,

3435 these respondents as a return thereto and each thereof first adopt the previous return to the order to show cause as filed herein, to-wit, the joint return of Rupert B. Turnbull, William Weisman and Francis Adams, and the return of Lawrence Allen, and make the same, each and every and all of the allegations thereof, and each and all of the denials therein contained, as a part of this return to the orders to show cause hereinbefore set forth.

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38-99



3436 Your respondents and each of them further object to the plan, sale and proposed transfer by the Insurance Commissioner on the following additional grounds:

That the law under which the petitioner Samuel L. Carpenter, Jr., seeks relief herein on behalf of some of the policyholders but not the non-cancellable policyholders, is a law which was adopted and came into being at a time subsequent to the issuance of the respective policies of insurance issued by The Pacific Mutual Life Insurance Company of California to the respondents and each of them, to-wit, policies issued in the years 1921, 1922 and 1923; that these respondents and each of them, under the terms of the respective policies of insurance, had vested rights of contract, and the respondents and each of them have paid the annual premiums respectively due under their policies to The Pacific Mutual Life Insurance Company of California at all times since the issuance of said policies respectively in 1921, 1922 and 1923. That your respondents and each of them are not in default and have not been in default at any time under the terms of their respective policies. That the law under which the petitioner Insurance Commissioner seeks to deprive your respondents and non-cancellable policyholders similarly situated,

3439 is a law which the Legislature of the state of California attempted to enact subsequent to 1923 and which, if applied herein, will be retroactive and deprive these respondents herein of their vested rights of contract, will deprive these respondents of their policies of insurance, will cause irreparable damage and injury to these respondents, for the reason that these respondents and each of them, by reason of the lapse of time and

3440 change of physical conditions of respondents and each of them, will be unable to and are unable to duplicate their insurance policies with The Pacific Mutual Life Insurance Company of California, and will be unable to and are unable to obtain other insurance. That the said act under which the petitioner Samuel L. Carpenter, Jr., seeks relief herein and the effect which he attempts to place upon said law and the results he

3441 attempts to accomplish in this court by said plan and sale, are contrary to the Fourteenth Amendment to the Constitution of the United States of America, contrary to the Constitution of the state of California, contrary to the Fifth Amendment to the Constitution of the United States of America, in that it attempts to deprive these respondents of their property without due process of law, that it attempts to deprive these respondents of their vested rights under contract.

3442 And these respondents and each of them further object to said proposed plan on the ground that the proposed plan and sale transfers to a certain class of policyholders the benefit of all of the assets of The Pacific Mutual Life Insurance of California including the good-will, which good-will and agency contracts are estimated by the petitioner Samuel L. Carpenter, Jr., to be of a value of not less than ten million dollars, and

3443 which your petitioners allege is a conservative figure to be placed upon said good-will. Your petitioners allege that the said good-will of the business sought to be sold is in excess of ten million dollars. That your respondents and those similarly situated are entitled to their actual pro rata of all the assets of The Pacific Mutual Life Insurance Company of California, including the good-will and intangibles of the business of said

3444 insurance company; that by said plan they have been deprived of their right to a distributive pro rata share; they are being deprived of the reserves created for their benefit; they are being deprived of their right to recover their portion of the reserves which the petitioner Samuel L. Carpenter, Jr., as Insurance Commissioner and as conservator has alleged have been wrongfully taken from the company in the form of an excess

3445 five million dollars in dividends declared, and concerning other assets some of which are now the subject matter of litigation instituted by said Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California and as the conservator of The Pacific Mutual Life Insurance Company of California to recover.

Wherefore, your petitioners pray that the proposed plan and sale and reinsurance plan as proposed by the Commissioner be denied, and that 3446 no plan which does not give unto the respondents and those similarly situated, to-wit, those holding non-cancellable policies, their proper share of the assets of the insurance company, be not confirmed, and that the proposed sale be not approved, and that unless some plan is proposed which will operate to give and grant to the non-cancellable policy holders that which is theirs by operation of law and by right, the court order a liquidation of the assets of the insurance company and a pro rata distribution of the assets to 3447 the creditors and policyholders.

RUPERT B. TURNBULL.

Verified.

Served on all parties by mail October 16, 1936.
Rupert B. Turnbull.

Endorsed: Filed Oct. 16, 1936, 4:23 p. m.
L. E. Lampton, county clerk; by J. C. Gordon,
deputy.

3448 [TITLE OF COURT AND CAUSE.]

Return on Order to Show Cause.

Henry B. Senn.

To the Parties Above Named and to Their Attorneys:

In response to the order to show cause, served by mail upon him, Henry B. Senn, holder of Noncancellable Policy No. 4659648 of defendant, dated June 15, 1925, Henry B. Senn objects to the approval of the proposed plan of rehabilitation referred to in said order to show cause, hearing on which is set for October 19, 1936, at 10 o'clock A. M., in Department 11 of said court, upon, among others, the following grounds:

3449

I. That the court has no jurisdiction to consider or approve said plan in this summary proceeding or at all.

3450

II. That the said plan includes the turning over, in effect, to the directors of the old company under whose direction the conditions of insolvency arose, approximately two hundred million (\$200,000,000.00) dollars in value of other people's property, which the record of these persons has demonstrated they are not fitted to handle.

III. That the proposed plan violates the rights of non-can policy holders to equal recog-

3451 nition and treatment with other creditors of the insolvent corporation.

IV. That the plan tends to deprive this objector of his vested rights as a creditor of the defendant, under his said policy, arising from his policy and for and because of existing disability due to a cardiac condition which has arisen since the date of the policy; which makes it now impossible for this objector to secure other disa-

3452 bility insurance.

V. That the said plan appropriates the value of lapses of non-can and other policies, which lapses would certainly result in great numbers from the operation of the plan for the benefit of stockholders who, through their agents, conducted the corporation into insolvency; and who are not entitled to preferential treatment over policy holders even if their agents have not violated the Insurance Code, concerning which situation the facts have not been submitted, and concerning which the Insurance Commissioner ought to inform the creditors, the policy holders and this court.

3453

VI. That the plan contemplates and its adoption would, in effect, absolve from responsibility for the amount of the deficit that produced the insolvency, the persons under whose management

3454 the deficit arose without reference to this court of the facts relative to the financial responsibility and the legal liability of the management of the defendant corporation and individuals composing it, for the deficit.

VII. That no reasoned statement from the standpoint of the interests of the policy holders has been presented why the plaintiff rejected the offer made to him to purchase the corporation and broke off negotiations for the purchase.

VIII. That the application of the Insurance Commissioner for approval of the proposed plan, acting in concert and in collaboration with the persons under whose direction the insolvency arose, which would preserve the stockholders' rights at the expense of the creditors and the policy holders of the insolvent corporation, and particularly upon the non-can policy holders, should be rejected.

IX. That the proposed plan is unjust and inequitable because its operation would result in the withdrawal from the assets of the corporation otherwise available for the payment of non-can policy holders practically all of the assets of the defendant, and limit recovery by non-can policy holders to a small part of the assets, arbitrarily, illegally and years after the payment of

3457 non-can policy premiums had gone into the general fund set aside by the management. That the basis of the segregation, the time when the management ascertained that the premium rates for non-can policies were insufficient, whether they took premiums and paid dividends after acquiring that knowledge, has not yet been brought to the attention of the court by the Insurance Commissioner.

3458 X. That it is a matter of general knowledge in the insurance world, and respondent is informed, appears from the "Alfred M. Best Insurance Reporter" for 1934, that dividends to stockholders of the old company, averaging 22% per year, had been paid over a prior period of 14 years; which said payments being made largely contemporaneously with the acceptance of premiums from this objector for his policy

3459 which it is now proposed to cancel because of a deficit largely produced while dividends which apparently should have been retained to carry out the contract were being paid out. The objector submits that these dividends should be reclaimed by the Insurance Commissioner in so far as it is possible to do so for the benefit of this objector and others similarly situated; and that the Insurance Commissioner should call to legal ac-

3460 count the stockholders and their agents for these dividend disbursements; this objector further submits that the persons who caused these dividends to be paid and those who received them and the agents of these persons, should not be placed in control of the trust fund for the policy holders of this insolvent corporation.

3461 These objections are filed as a return to the order to show cause aforesaid and to preserve the rights of this respondent, and without waiving his right to intervene in said action; or, in event the plan objected to be approved, to apply to any court of appropriate jurisdiction for a writ of prohibition.

Dated: October 16, 1936.

ALBERT E. COGER,
Attorney for Henry B. Senn.

3462 Endorsed: Received copy of the within return this 16th day of October, 1936. U. S. Webb, attorney general; John L. Flynn, deputy; Mitchell, Silberberg & Knupp, attorneys for plaintiff.

Received copy of the within return this 16th day of October, 1936, _____,
attorneys for defendant.

Received copy of the within return this 16th day of October, 1936: _____,
attorneys for intervenor.

Filed Oct. 17, 1936, 9:34 a. m. L. E. Lamp-ton, county clerk; by E. T. Crozier, deputy.

3463 [TITLE OF COURT AND CAUSE.]

Response of George W. Manierre and B. Robert Getts, Respondents, to the Order to Show Cause Dated September 25, 1936.

3464 Come now George W. Manierre of the city of Pasadena in said county of Los Angeles, and B. Robert Getts of the city of Los Angeles in said county, respondents to the order to show cause dated September 25, 1936, and heretofore entered herein, and answering said order to show cause on their own behalf and on behalf as well of all similarly situated policyholders of The Pacific Mutual Life Insurance Company of California, allege as follows:

I.

In this answer are used the definitions set forth in the rehabilitation and reinsurance agreement dated as of the 22nd day of July, 1936, mimeographed copy of which has been furnished to these respondents by the Commissioner.

3465

II.

Respondent George W. Manierre is the holder of non-can policy number 4623963, form A283, issued by the old company to this respondent on October 7, 1921, providing among other things for the payment of a disability benefit of \$200.00 per month during the continuance of disability, after the first two weeks of such disability, in consideration of an annual premium of \$130.00. which premium this respondent has paid to the old company for the period of fifteen years last

3466 past; liability for the monthly benefits of said policy being assumed by the new company under said rehabilitation and reinsurance agreement only to the extent of twenty per cent (20%) of such monthly benefits.

III.

Respondent B. Robert Getts is the holder of non-can policy number 4620607, issued by the old company to this respondent on August 14, 1921, providing among other things for the payment of a disability benefit of \$200.00 per month during the continuance of disability, after the first three months of such disability, in consideration of an annual premium of \$45.00, which premium this respondent has paid to the old company for the period of fifteen years last past; liability for the monthly benefits of said policy being assumed by the new company under said rehabilitation and reinsurance agreement only to the extent of twenty per cent (20%) of such monthly benefits.

IV.

That respondents object to the making of orders ratifying, confirming and approving the acts and doings of the Commissioner, either as conservator or otherwise, as set forth in the paragraphs numbered 1, 2, 3 and 8 of said order to show cause, and to the making of orders authorizing and directing said Commissioner, as conservator or otherwise, as set forth in the paragraphs numbered 3, 4 and 5 of said order to show cause, and to the making and entry of

3469 orders, decrees or directions, as set forth in the paragraphs numbered 6, 7 and 9 of said order to show cause, and, specifically, to the making of orders ratifying, confirming and approving said rehabilitation and reinsurance agreement, and for causes of objection allege:

(a) That the old company is under a definite liability to each of these respondents because of its anticipatory breach of its contract with these respondents, as evidenced by the non-can policies held by these respondents, as aforesaid.

3470 (b) That the new company, under the terms of said rehabilitation and reinsurance agreement, pays no valuable consideration for the assets of the old company, which, in pursuance of said agreement, are turned over to the new company; that the new company is in fact but a reorganization of the old company and, under the facts as set forth in the petition for approval of said rehabilitation and reinsurance agreement filed by

3471 said Commissioner, as conservator, can only take over and acquire said assets subject to the assumption of all of the liabilities of the old company, including the old company's liabilities to non-can policyholders.

(c) That the consummation of said rehabilitation and reinsurance agreement will be a constructive, if not an actual, fraud upon these respondents, and will hinder and delay them in the collection of their damages for breaches of contract by the old company.

- 3472 (d) That in said rehabilitation and reinsurance agreement no adequate provision is made for the protection of the rights and interests of these respondents, as holders of non-can policies, but that, on the other hand, these respondents and other holders of similar non-can policies are discriminated against in favor, and to the benefit, of holders of participating and non-participating life policies and of other classes of accident and health policies, to the extent that the assets of the old company transferred to the new company are to be held as reserves for the benefit of holders of policies other than non-can policies similar to those held by these respondents, to the great detriment of these respondents and others similarly situated, whereas all of the assets of the old company should, in equity and good conscience, be held for the payment of all of its liabilities and for the equal benefit and protection of all persons to whom it may be liable.
- 3474 (e) That the Commissioner, as conservator, is without power under the Insurance Code to enter into said rehabilitation and reinsurance agreement in substance as presented to the court as Exhibit "A" of his petition for the approval thereof.
- (f) That an order made by the court approving said agreement and authorizing rehabilitation as therein provided, will be made in violation of section 1 of article XIV of the Constitution of the United States and in violation of section 13 of article I of the Constitution of California.

3475 (g) That the Insurance Code, insofar as it assumes to provide for the rehabilitation and mutualization of life insurers, with resulting discrimination between policyholders and impairment of the obligation of contracts held by certain policyholders, is in conflict with section 10 of article I of the Constitution of the United States and with section 16 of article I of the Constitution of California, and is unconstitutional and void.

3476 Wherefore, these respondents having fully answered said order to show cause, pray that said order may be forthwith discharged and that the court forthwith order the conservator to proceed to the liquidation of the old company upon such terms and conditions as may be adequate to fully preserve and protect the rights and interests of these respondents and of all other non-can policyholders similarly situated.

MANIERRE & CUTHBERTSON,

3477

By G. M. CUTHBERTSON,

*Attorneys for George W. Manierre and B.
Robert Getts, Respondents.*

Verified.

Endorsed: Received copy of the within response this 16th day of October, 1936. Dep. Atty. Gen. John L. Flynn, attorney for S. L. Carpenter, Jr., Ins. Com., by Geo. Q. McNamara.

Filed Oct. 17, 1936, 10:19 a. m. L. E. Lamp-ton, county clerk; by M. Zimmerman, deputy.

3478 [TITLE OF COURT AND CAUSE.]

**Joint Answer and Objections of Interveners,
Dr. Arthur B. Allen, Dr. Carl H. Parker,
Lloyd W. Brooke and I. Blair Evans, to
Petition for Approval of Revised Re-
habilitation and Reinsurance Agree-
ment, and to Order to Show Cause With
Respect to Rehabilitation and Reinsur-
ance.**

Come now interveners, Dr. Arthur B. Allen,
3479 Dr. Carl H. Parker, Lloyd W. Brooke and I.
Blair Evans, and for joint answer and objections
to the petition for approval of revised rehabilita-
tion and reinsurance agreement filed on Septem-
ber 25, 1936, and for joint answer and objections
to order to show cause with respect to rehabilita-
tion and reinsurance, which order was made on
September 25, 1936, admit, allege and deny as
follows, to-wit:

I.

3480 Interveners repeat, replead, reallege and adopt;
to the same extent as though herein set forth in
their entirety, each and every portion and part
of the allegations and averments contained in
their complaint in intervention, filed in the above
entitled action on August 19, 1936.

II.

Interveners repeat, replead, reallege and adopt,
to the same extent as though herein set forth in
their entirety, each and every portion and part

- 3481 of the allegations, denials and objections, which are made as and serve as a defense to and as objections to said revised rehabilitation and reinsurance agreement, to said petition for approval of revised rehabilitation and reinsurance agreement and to said order to show cause with respect to rehabilitation and reinsurance, which have been and which hereafter may be filed in the above entitled action, and which may be made at the hearings of said order to show cause and
- 3482 said petition, by other holders of non-cancellable income policies issued by the old company; provided, however, that by this adoption, these answering interveners do not approve or subscribe to any proposed plan of rehabilitation or reinsurance which may have been or which may hereafter be submitted by said other policy holders; and provided, further, that by this adoption, these answering interveners do not to any extent waive or recede from any of their contractual, constitutional or other rights established by their
- 3483 respective non-cancellable income policies issued by the old company.

III.

Interveners particularly object to the revised rehabilitation and reinsurance agreement upon the ground that, when it is compared with the original rehabilitation and reinsurance agreement, it is self-evident that, and it is alleged, upon information and belief, that the petitioner, Samuel L. Carpenter, Jr., Insurance Commissioner of the

3484 State of California, has not made proper effort to submit to the above entitled court a rehabilitation and reinsurance plan which gives proper consideration to the rights of holders of non-cancellable income policies issued by the old company, and it is self-evident that, and it is alleged, upon information and belief, that said petitioner has adhered to the original scheme of depriving said non-cancellable income policy holders of their contractual, constitutional and other rights for the purpose of securing an inequitable advantage for holders of other classes of policies, particularly life policies, and for other creditors of the old company.

IV.

That said revised rehabilitation and reinsurance agreement does not, to any material extent, seek to protect or preserve the contractual, constitutional or other rights of holders of non-cancellable income policies, issued by the old company; and that unjust discrimination is proposed to be shown against such policy holders by said revised plan.

V.

That said revised rehabilitation and reinsurance agreement fails to provide an alternate schedule whereby the holders of non-cancellable income policies, issued by the old company, may elect to receive the full original monthly benefits provided in their respective policies by paying a

3487 reasonably higher premium, in lieu of paying, as now provided in said revised rehabilitation and reinsurance agreement, the originally established premiums and securing only a percentage of the original monthly benefit; and that said revised rehabilitation and reinsurance agreement fails to provide that all sums in excess of the originally established premium rates which shall be paid by non-cancellable income policy holders pursuant to such alternate schedule shall be deposited in a
3488 special fund, and that such excess payments shall be refunded to the respective payors at the earliest date on which net profits derived by the carrier from its entire business operations shall make such refunding possible. That these answering interveners proposed to the petitioner, Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, at the conferences of parties litigant in the above entitled matter held immediately preceding the filing of
3489 said petition and said revised rehabilitation and reinsurance agreement, that such an alternate schedule, together with said provisions relative to the establishment of a special fund and relative to said refunding, be included in any rehabilitation and reinsurance plan. That these answering interveners are informed and believe, and therefore allege, that the refusal of said petitioner to incorporate such an alternate schedule, together with said provisions relative to the establishment of a special fund and relative to said

- 3490 refunding, in said revised rehabilitation and reinsurance plan, was prompted by his feeling that such alternate schedule and provisions might, in some slight degree, serve to jeopardize the interests of holders of other policies and other creditors of said old company, and that said petitioner has given no further consideration to such proposed alternate schedule or the said provisions relative to said fund and refunding, and has made no effort whatsoever to determine whether
- 3491 the anticipated injury to such other policy holders and creditors would, in fact, occur and if occurring, whether such injury would in any degree be proportionate to the injury which would be sustained by interveners and other holders of non-cancellable income policies in the event such an alternate schedule and such provisions relative to the establishment of said special fund and relative to said refunding should not be included in a rehabilitation and reinsurance plan. These
- 3492 answering interveners are informed and believe, and therefore allege, that the failure of said petitioner to properly consider such proposed alternate schedule and such provisions relative to the establishment of said special fund and relative to said refunding, was motivated primarily by his desire to deprive the non-cancellable income policy holders of their contractual, constitutional, and other rights for the purpose of securing an inequitable advantage for holders of other classes of policies, particularly life policies, and for other creditors of the old company.

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VI.

These answering interveners particularly object to the revised rehabilitation and reinsurance agreement because of the failure therein to require that all future net earnings of the carrier be applied immediately toward the restoration of non-cancellable income policies.

VII.

3494

Particularly answering paragraph IV of said petition, allege that they do not have knowledge, information or belief sufficient to enable them or either of them to answer the allegations therein contained, and because of such absence of knowledge, information and belief, and basing their answer on that ground deny, generally and specifically, each and every allegation therein contained and demand that strict proof be made thereof by the petitioner; except, however, they admit that commencing in the year 1918 said old company started issuing its so-called "Non-cancellable Income Disability Policy," and that in subsequent years the premium rates thereon were increased.

3495

VIII.

Answering paragraph V of said petition, allege that they do not have knowledge, information or belief sufficient to enable them or either of them to answer the allegations therein contained, and because of such absence of knowledge, information and belief, and basing their answer on that

3496 ground deny, generally and specifically, each and every allegation therein contained and demand that strict proof thereof be made by the petitioner.

IX.

Answering paragraph VI of said petition, allege that they do not have knowledge, information or belief sufficient to enable them or either of them to answer the allegations therein contained, and because of such absence of knowledge, information and belief, and basing their
3497 answer on that ground deny, generally and specifically, each and every allegation therein contained and demand that strict proof thereof be made by the petitioner; except, however, they admit that petitioner on July 22, 1936, filed in the above entitled court a verified application; that said court on July 22, 1936, purported to
3498 appoint petitioner as conservator of the old company; that on August 11, 1936, said court purported to ratify, approve and confirm said order and appointment, purported to adopt the same, and purported to reappoint petitioner as conservator, and that said petitioner took possession of the assets of the old company and carried on and conducted the business and affairs of the old company.

3499

X.

Answering paragraph VII of said petition, allege that they do not have knowledge, information or belief sufficient to enable them or either of them to answer the allegations therein contained, and because of such absence of knowledge, information and belief, and basing their answer on that ground deny, generally and specifically, each and every allegation therein contained and demand that strict proof thereof be made by the petitioner; except, however, they admit the corporate organization of the new company, the transfer thereto of the sum alleged, the transfer thereto of certain assets of the old company, that the petitioner has carried on and conducted the business and affairs of the old company, that petitioner applied for a certain court order, and that the above entitled court
3500
3501 purported to make said order on August 17, 1936.

XI.

Answering paragraph VIII of said petition, allege that they do not have knowledge, information or belief sufficient to enable them or either of them to answer the allegations therein contained, and because of such absence of knowledge, information and belief, and basing their

3502 answer on that ground deny, generally and specifically, each and every allegation therein contained and demand that strict proof thereof be made by the petitioner; except, however, they admit the petitioner has invited the presentation of plans and offers and that petitioner submits a proposed agreement and asks approval thereof.

Wherefore, these answering and objecting interveners pray as follows, to-wit:

3503 (1) That said petition be wholly denied;

(2) That the revised rehabilitation and reinsurance agreement, as proposed by the petitioner, be wholly denied and disapproved;

(3) That no rehabilitation and reinsurance agreement be entertained or approved by the court until and unless the same shall serve to fully protect and preserve the contractual and constitutional rights of holders of non-cancellable

3504 income policies, and until and unless the same shall make no discrimination whatsoever against this class of policy holders in favor of any other class of policy holders or creditors;

(4) That no rehabilitation and reinsurance agreement be entertained or approved by the court until and unless the same shall contain an alternate schedule whereby the holders of non-

3505 cancellable income policies may elect to receive
the full original monthly benefits provided in
their respective policies by paying a reasonably
higher premium, in lieu of paying the originally
established premiums and securing only a per-
centage of the original monthly benefit; and until
and unless the same shall provide that all sums
in excess of the originally established premium
rates, which shall be paid by non-cancellable in-
3506 come policy holders pursuant to such alternate
schedule, shall be deposited in a special fund, and
that such excess payments shall be refunded to
the respective payors at the earliest date on which
net profits derived by the carrier from its entire
business operations shall make such refunding
possible;

(5) That each of these answering interven-
ers have and recover his respective costs herein
3507 against the petitioner; and

(6) For such other and further relief as to
the court may seem meet and proper in the prem-
ises.

W. B. ETHERIDGE,

*Attorney for Interveners, Dr. Arthur B. Allen,
Dr. Carl H. Parker, Lloyd W. Brooke and
I. Blair Evans.*

Verified.

3508 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. Pacific Mutual Life Insurance Company, a corporation, intervener. Dr. Arthur B. Allen, Dr. Carl H. Parker, Lloyd W. Brooke and I. Blair Evans, 3509 interveners. No. 404673.

Affidavit of Mailing.

State of California, County of Los Angeles—ss.

Alice M. Leupp, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the county of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 712 First Trust Building, Pasadena, California; that on the 16th day of October, 1936, affiant served the within joint answer and objections of interveners, etc., on the petitioner in said action by placing a true copy thereof in an envelope addressed to one of the attorneys of record for said petitioner at the office address of said attorney, as follows:

3511 "U. S. Webb, Attorney General, State Building, Los Angeles, California"; and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Pasadena, California, where is located the office of the attorney for the persons by and for whom said service was made.

3512 That there is delivery service by United States mail at the place so addressed, or there is a regular communication by mail between the place of mailing and the place so addressed.

ALICE M. LEUPP.

Subscribed and sworn to before me this 16th day of October, 1936.

(Seal)

MABEL CLAUSEN,
Notary Public in and for the County of Los Angeles, State of California.

3513

Endorsed: Filed Oct. 17, 1936, 10:19 a. m.
L. E. Lampton, county clerk; by M. Zimmerman,
deputy.

3514 [TITLE OF COURT AND CAUSE.]

Proposal.

To the Honorable, the Superior Court of the
State of California, in and for the County
of Los Angeles:

The proposal set forth on the following pages is respectfully submitted for consideration in this matter, by the Transamerica group, to-wit:

3515 PROPOSAL TO REINSURE THE BUSINESS
OF
THE PACIFIC MUTUAL LIFE INSURANCE
COMPANY OF CALIFORNIA

The plan hereinafter outlined contemplates the organization of two corporations under the laws of the state of California. Said companies will be appropriately named, each will be under separate and independent management, and will be referred to herein as the "Life Company" and the "Accident Company". The Transamerica group, of which the Occidental Life Insurance Company is a part, will pay to said corporations an aggregate of \$12,108,200.00. The Accident Company will receive a portion of the profits of the Life Company.

The Pacific Mutual Life Insurance Company of California will be hereinafter designated as "Pacific Mutual". Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California,

3517 as Conservator of The Pacific Mutual Life Insurance Company of California, will be hereinafter referred to as "Conservator". The Superior Court of the State of California in and for the County of Los Angeles will be hereinafter referred to as "The Court". Non-cancellable Income Policies will be hereinafter referred to as "Non-Can policies". The term "Commissioner" shall mean the present Insurance Commissioner of the State of California or his successor in 3518 office.

The Life Company

1. The Life Company shall have a capital of \$1,000,000, together with a surplus of \$2,000,000, said amounts, aggregating \$3,000,000, to be paid into the company by the Transamerica group.

3519 2. The Life Company will reinsure and assume the liabilities of the Pacific Mutual under all policies and contracts of insurance, except Non-Can policies, issued or assumed by the Pacific Mutual and outstanding and in force on July 22, 1936, or issued by the Conservator, subject, however, to any and all offsets, rights and defenses then or thereafter existing against said policies or contracts of insurance which would have been available to the Pacific Mutual or the Conservator. Liabilities under Non-Can policies are expressly excluded from the obligations assumed by the Life Company.

3520 3. (a) The Life Company will agree to re-insure and assume, upon the terms and conditions hereinafter set forth, all policies other than Non-Can policies, which have lapsed, upon the reinstatement thereof in accordance with the terms and conditions of each such policy.

3521 (b) The foregoing paragraph (a) is modified to the extent that any policy, other than a Non-Can policy, lapsed since July 22, 1936, will be reinstated during the lifetime of the insured, provided the insured is not in such condition as to be eligible for benefits under his policy, without evidence of insurability, on written application therefor by the insured and payment of all premiums in arrears, if such application is made and premiums are paid within seventy-five (75) days after the approval by the Court of the re-insurance agreement contemplated by this proposal.

3522 (c) Upon the reinstatement of a lapsed policy it shall for all purposes be treated (but only from and after the date of reinstatement) the same as if it had been in force on the effective date of the reinsurance agreement contemplated herein, and shall be subject to the terms and conditions of said agreement.

4. The Life Company will pay in full all valid unpaid claims under policies issued or assumed by the Pacific Mutual; other than Non-Can policies, and all claims arising under the

3523 policies reinsured by it, and all liabilities which are incident to such policies, subject, however, to any and all defenses, offsets or counterclaims which would have been available to the Pacific Mutual or to the Conservator.

5. (a) The Conservator shall sell, assign, convey and transfer, or cause to be sold, assigned, conveyed and transferred to the Life Company, vesting title thereto in the Life Company free and clear of encumbrances, tax or other liens
3524 or adverse claims, Pacific Mutual assets equal in value to the aggregate sum of the legal reserves required for the policies and contracts reinsured by the Life Company and such other liabilities assumed by the Life Company in its reinsurance agreement.

(b) All of the Pacific Mutual assets to be acquired by the Life Company, as hereinabove set forth, shall be taken at values to be deter-
3525 mined and fixed by mutual agreement between the Conservator and the Transamerica group. Any assets upon the value of which the Conservator and said Transamerica group cannot agree, shall be valued by a board of three appraisers, two of whom shall be appointed by the Court and the third by the Transamerica group. Assets to be transferred and set over to the Life Company shall be selected by the Conservator and approved by the Transamerica group, at

3526 values agreed upon as aforesaid or determined by said appraisers, as the case may be.

(c) The amount of the reserves required for the business reinsured and the value of the assets to be acquired by the Life Company shall be fixed and determined as of the effective date of the contemplated reinsurance agreement.

3527 (d) On the assumption that the amount of the required reserves and the value of assets will be approximately the same on the effective date of the proposed reinsurance agreement as the asset values and reserves set forth in the Convention Examination Report as of December 31, 1935, the attached schedules, designated Schedule A and Schedule A-1, will reflect the approximate amount of assets to be acquired, the approximate amount of required reserves, the approximate amount of liabilities to be assumed, and the capital structure of the Life Company.

3528 6. The Life Company will engage in a general life, accident and health insurance business and will segregate its business by establishing three departments, namely: (1) Participating Life Insurance Department; (2) Non-participating Life Insurance Department; and (3) General Accident and Health Insurance Department. To each department will be allocated a portion of the Pacific Mutual assets acquired by the Life Company equal in value to the amount of reserves and liabilities of such department. The selection

3529 of assets allocated to each department shall be made by the Conservator and approved by the Transamerica group.

7. The Life Company will assume no claims or liabilities of any kind or nature against the Pacific Mutual or the Conservator other than those hereinabove set forth. The Life Company will pay to the Conservator such amount of money, if any, hereafter paid by the Conservator in satisfaction of claims filed by dissenting hold-
3530 ers of policies reinsured under the terms of this proposal and allowed by the Court. There shall be no moratorium on policy loans or surrenders for cash value.

8. Representation on the Board of Directors of the Life Company will be offered to interested groups of policy holders and agents; and in the conduct of its business the Life Company will retain ~~all~~ satisfactory employees of the Pacific Mutual.

3531 9. The Life Company will enter into equitable agency agreements with such agents of the Pacific Mutual as desire to become associated with the Life Company, and so long as any such agent remains in the service of the Life Company, renewal commissions will be paid such agent on policies written by him for the Pacific Mutual and reinsured by the Life Company, in accordance with the terms and provisions of his Pacific Mutual agency contract covering such

3532 business. In computing commissions under Pacific Mutual agency contracts policies reinsured by the Life Company shall be considered a continuation of existing policies and not the writing of new business.

10. The Life Company will pay to the Accident Company fifty per cent (50%) of the net profits of the business of its Accident Department, payments to be made in annual installments, subject to the terms and conditions and

3533 termination of such payments, as hereinafter set forth.

The Accident Company

11. The capital stock of the Accident Company will consist of 254,100 shares of Class A common stock and 254,100 shares of Class B common stock. All of said stock shall be of the par value of \$1.00 per share and shall have the same voting and dividend rights. The Trans-
3534 america group will pay \$508,200 for said stock, totaling 508,200 shares, and will deliver all of the Class A stock to the stockholders of the Pacific Mutual on terms and conditions to be set forth in the contemplated reinsurance agreement. Class A common stock shall be callable at any time within ten (10) years at \$30 per share. In the event of liquidation of the Accident Company after restoration of full benefits and agents' commissions, Class A stock shall participate in the distribution of assets to the extent of \$10 per share, after which the Class B stock shall

3535 participate in such distribution of assets to the extent of \$10 per share, and thereafter both classes of stock shall participate equally in any distribution of assets.

12. In addition to the payment of \$508,200 as set forth in the preceding paragraph, the Transamerica group will pay to the Accident Company \$1,100,000 and will make further payments to the Accident Company of a sum not exceeding \$7,500,000, at the rate of \$500,000 per 3536 year, subject to the terms and conditions hereinafter set forth.

13. (a) The Accident Company will assume and reinsure liabilities of the Pacific Mutual and the Conservator under all Non-Can Accident and Health policies issued by the Pacific Mutual and in force on the effective date of the agreement contemplated by this proposal, subject to the policy terms and conditions and also 3537 to the terms, conditions and limitations; and only and subject also to any and all claims, defenses, actions and rights in connection therewith, which would have been available to the Pacific Mutual or the Conservator.

(b) The Accident Company will pay, without deduction, every valid claim for disability benefits under any such policy for disability arising prior to July 22, 1936, with respect to which claim or notice of claim was duly filed in accordance with the terms of the policy on or before

3538 August 12, 1936, and will likewise pay all liabilities, without deduction, under settlement agreements made by the Pacific Mutual with claimant under any such policy. All such claims are subject, however, to all defenses and rights which would have been available to the Pacific Mutual or to the Conservator.

3539 (c) As to all other claims for disability benefits under Non-Can policies, now pending or hereafter arising, the Accident Company's liability in any such case shall be limited to the percentages of the monthly disability benefits set forth in the following schedule:

Prem. Class	Issued Under Rate Books	Policy Forms	Issued Under Policy Nos.	Percent- age of Original Monthly Benefit Assumed New Company
3540	1918 A1445-A1445Z	A231 to A288, inc.	2658601 to 2698150	50%
	A1445Y-A1445X		4600501 to 4628000	
	A1445W		4711101 to 4712600	
			4730901 to 4731100	
	1921 A1687-A1687Z	A291 to A294, inc.	4628001 to 4700000	59%
	A1687Y-A1687X	A365-A366		
	A1687W			
	1926 A1958-A1958Z	A382-A383	5500001 to 5600000	65%
		A386-A387		
		A387Z		
	1929 A2293	A382-A383	5600001 to 5620000	72%
		A386-A387		
		A387Z		
	1931 A2367	A753 to A756, inc.	5620001 to 5635000	78%
		A763-A764		
	1932 A2432-A2432Z	A775 to A780 inc.	5635001 to 6000000	93%
	A2499			
	A2499	Aggregate		
		A1216 to A1221, inc.	6500001 to 7000000	93%
	1935 A2567	Aggregate		
		A1226 to A1229, inc.	7000001 to 7100000	93%

3541 Benefits under all such policies shall be reduced to the extent indicated in the foregoing schedule but shall be subject to restoration of monthly benefits as hereinafter provided.

(d) Notwithstanding the reduction in benefits and the limitation of the obligation of the Accident Company to make monthly disability payments, as set forth in the preceding paragraph, each holder of any such policy, to be entitled to the benefit of the proposed reinsurance agreement, shall be obligated to continue payment of premiums in the amount stipulated in his policy.

3542 14. (a) At the end of five (5) years from the effective date of the contemplated reinsurance agreement, or at such earlier date as may be fixed by the Commissioner, the reserve requirements shall be recomputed and if reserves and funds available for reserves are then sufficient to justify an increase in the schedule of benefits set forth in paragraph 13(c) hereof, 3543 benefit payments on claims then in force at reduced rates and benefits on future claims will be increased to a rate approved by the Commissioner. Thereafter, redetermination of reserve requirements and available reserves for the purpose of adjusting benefit rates shall be made from time to time upon request of the Accident Company or the Commissioner, to the end that full benefit payments under said policies may ultimately be restored.

3544 (b) Surplus of the Accident Company (not including funds received from the Life Company representing a share of the net profits of its Accident and Health Department) not required for the successful conduct and operation of its business, shall be used for the purpose of restoring benefits under all policies not in benefit and increasing future payments under policies in benefit. Such available funds shall from time to time be added to the reserves for such
3545 policies until such time as adequate reserves have been established for the full restoration of such policies; at which time the Accident Company will fully assume and reinsure all such policies not in benefit, and at said time said policies not in benefit shall be deemed to be fully restored.

(c) Funds received from the Life Company, representing one-half of the net profits of its Accident and Health Department, shall be used exclusively for the purpose of making up deficiency in payments of disability benefits to
3546 claimants who have been paid less than they were entitled to receive under their policies as originally written.

After policies not in benefit shall have been fully reinsured and a surplus of \$2,500,000 shall have been accumulated for Class A stock, all surplus funds of the Accident Company not required for the successful conduct and operation of its business, shall be used for the purpose of making

3547 up deficiency in payments of disability benefits to claimants who have been paid less than they were entitled to receive under their policies as originally written.

(d) The Accident Company shall not be required to pay or restore full benefits under policies as originally written, except in the manner and to the extent hereinabove set forth.

3548 (e) The Transamerica group agrees to make certain payments to the Accident Company for a period of fifteen (15) years, as set forth in paragraph 12 hereof. Whenever, prior to the expiration of said fifteen year period, full restoration of benefits, not including deficiencies in benefit installments previously paid, shall have been made and there has been full restoration of commissions to agents, and the Accident Company shall have accumulated a surplus of \$2,500,000 for its Class A stock, then upon the
3549 happening of those events, the Transamerica group will be released from its obligation to make any further payments. Transamerica group reserves the right to make payment at any time prior to the expiration of said fifteen year period of an amount sufficient to provide a surplus of \$2,500,000 for the Class A stock after providing for full restoration of benefits, not including deficiencies in benefit installments previously paid, and agents' commissions, and upon the making of such payment Transamerica group will be re-

3550 leased from its obligation to make any further payments.

Upon full restoration of benefits, payment of deficiencies in benefit installments previously paid and restoration of commissions to agents, the Life Company will be released from its obligation to pay to the Accident Company a portion of the net profits of the Accident and Health Department.

3551 No dividends shall be paid to stockholders of the Accident Company until after full restoration of benefits, payment of deficiencies in benefit installments previously paid and restoration of commissions to agents.

(f) The basis to be used in determining the adequacy of reserves shall be the New York Standard Table, with the variable factor limited to the actual experience of the Pacific Mutual and/or the Accident Company with Non-Can Accident and Health insurance, or such other table or basis as shall be required by the laws of the state of California.

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15. All of the Pacific Mutual assets not transferred and delivered to the Life Company, and the proceeds of any claim, right or cause of action collected by the Conservator, shall be trans-

3553 ferred, assigned and conveyed to the Accident Company.

16. On the assumption that the value of the assets and the required reserves will be approximately the same on the effective date of the proposed reinsurance agreement as the asset values and reserves set forth in the Convention Examination Report as of December 31, 1935, the attached schedules, designated Schedule A and 3554 Schedule B, indicate the approximate amount of assets to be taken over by the Accident Company, the approximate amount of required reserves, the approximate amount of liabilities to be assumed and reinsured by the Accident Company, and the capital structure of the Accident Company. The proposal to pay benefits, on claims arising subsequent to July 22, 1936, according to the schedule of reduced benefits here- 3555 inabove set forth, is based upon the figures and statistics contained in the Convention Examination Report of the business and condition of the Pacific Mutual as of December 31, 1935, and shall be subject to examination, verification, adjustment and extension of the data contained in said report, to the effective date of the agreement contemplated by this proposal.

3556 17. Representation on the Board of Directors of the Accident Company will be offered to interested groups of policy holders and agents; and in the conduct of its business the Accident Company will retain all satisfactory employees of the Pacific Mutual.

18. The Accident Company shall have the right to engage in a general accident and health insurance business.

3557 19. The Accident Company will enter into equitable agreements with such agents of the Pacific Mutual as desire to become associated with the Accident Company, and so long as any such agent remains in the service of the Accident Company, renewal commissions will be paid such agent on policies written by him for the Pacific Mutual and reinsured by the Accident Company,

3558 in accordance with the terms and provisions of his Pacific Mutual agency contract covering such business, as herein modified. This proposal contemplates the temporary payment of disability benefits under the Non-Can Policies on a reduced basis. It is believed that agents are interested in the restoration of full benefit payments under Non-Can policies at the earliest practicable date and, to that end, are willing to cooperate with proponent by deferring payment of a part of

3559 their commissions which would otherwise be payable to them. It is proposed that commissions payable to agents on Non-Can policies shall be adjusted by a reduction thereof corresponding to the percentage of reduction of benefit payments in effect for each class of policies as shown in the schedule hereinabove set forth. As the rate of benefit payments under policies is increased, commissions to agents will at the same time be
3560 correspondingly increased.

20. The Accident Company will agree to pay the Conservator a sum equal to all legal and valid claims filed with the Conservator and allowed by the Court, except valid claims of any character which may be allowed by the Court and paid by the Conservator prior to the transfer and delivery of Pacific Mutual assets to the Accident Company. In the event that claims of
3561 any kind not specifically assumed by the Life Company and not arising out of the business transacted by said Company on its own account, shall be asserted against the Life Company and the Life Company shall be required by the final judgment of any court of competent jurisdiction to pay or discharge such claims, or in case the Life Company is made a party defendant in any suit or suits arising out of the pending proceed-

3562 ings, the Accident Company shall reimburse the Life Company for all amounts so determined and paid and also its reasonable costs and expenses incurred in connection with any such litigation.

The foregoing sets forth the essential features of the plan of the Transamerica group for the reinsurance of the business of the Pacific Mutual. If this proposal is accepted, appropriate agreements will be prepared and executed which will clearly and definitely express the intentions and 3563 the obligations of the parties thereto. In addition to the matters outlined in this proposal such agreements will contain such other provisions as may be mutually agreed upon by the Conservator and the Transamerica group, including such provisions as are usually contained in reinsurance agreements.

If, in the opinion of the Conservator and the Court, the proposal hereinabove outlined can be modified so as to facilitate and make more effective its purposes the Transamerica group will 3564 give careful and sympathetic consideration to any suggestions for the improvement of its general plan, to the end that all interested persons, and particularly policy holders in all groups, may be accorded treatment that is as fair, just and equitable as it is possible to secure under all the circumstances.

Dated at Los Angeles, California, October 17, 1936.

L. M. GIANNINI

3565

Schedule A

**THE PACIFIC MUTUAL LIFE INSURANCE COMPANY
OF CALIFORNIA**

Schedule of Net Assets, Liabilities and Surplus or Deficit for Life,
General Accident and Health (exclusive of non-can), and non-
cancellable Accident & Health Departments

Constructed from Convention Examination Report—December, 31, 1935

	Life	Accident & Health	Non-Can	Total
3566				
Net Assets	\$187,893,222.60		\$27,023,979.50	\$214,917,202.10
Net Reserves:				
For Policies & Ann.	154,989,200.00			154,989,200.00
Unearned Prem.		\$1,107,357.25	1,796,570.87	2,903,928.12
Non-can policies			24,685,977.00	24,685,977.00
Losses & Claims	1,343,558.00	690,178.00	19,643,031.00	21,676,767.00
Disability	10,120,656.00			10,120,656.00
Sup. Contracts	5,718,710.00			5,718,710.00
Est. Claim Exp.				
3567 Liab.		38,858.00	824,481.00	863,339.00
Com. Payable		104,400.00	35,626.00	140,026.00
Asset Val.				
Reserves	2,103,349.94	440,000.00		2,543,349.94
Taxes Accrued	570,560.52	204,223.27		774,783.79
Other Liab.	7,331,992.14	224,647.81		7,556,639.95
Total Liabilities and Reserves	182,178,026.60	2,809,664.33	46,985,685.87	231,973,376.80
Surplus or Deficit	5,715,196.00	2,809,664.33	19,961,706.37	17,056,174.70

3568	Surplus Assets in Life Dept. to be transferred to			
	Acc.	5,715,196.00	2,809,664.33	2,905,531.67
	& Health & Non-can Departments			
	Deficit			
			17,056,174.70	17,056,174.70

	Assets for Each Dept. after transferring			
3569	Life Dept. surplus Assets to Acc. Dept.	182,178,026.60	2,809,664.33	29,929,511.17 214,917,202.10

Schedule A-1

NEW LIFE COMPANY

OPENING FINANCIAL STATEMENT ASSUMING ASSETS AND
RESERVES CORRESPONDING IN AMOUNT WITH
AMOUNTS CONTAINED IN SCHEDULE A

ASSETS

	Cash Paid in by Transamerica Group	\$ 3,000,000.00
3570	Net Assets—Life Dept.	182,178,026.60
	Net Assets—Acc. & Health Dept.	2,809,664.33
	Total Assets	<u>\$187,987,690.93</u>

LIABILITIES, RESERVES AND CAPITAL

Total Liabilities and Reserves	184,987,690.93
Capital Stock	7,000,000.00
Paid-in Surplus	2,000,000.00
Total Liabilities, Reserves and Capital	<u>\$187,987,690.93</u>

3571

Schedule B

**ACCIDENT COMPANY OPENING FINANCIAL STATEMENT
ASSUMING ASSETS CORRESPONDING IN AMOUNTS
WITH AMOUNTS CONTAINED IN SCHEDULE A,
AND USING RESERVES REQUIRED TO MAINTAIN
BENEFIT PAYMENTS ON NON-CANCELLABLE
POLICIES AT THE RATES SET FORTH IN PARA-
GRAPH 13(c) OF THE FOREGOING PROPOSAL.**

ASSETS

Cash paid in by Transamerica Group under foregoing proposal	\$ 1,608,200.00
*Deferred Receivables	7,500,000.00
Other Net Assets	29,929,511.17
Total Assets	<u>\$39,037,711.17</u>

3572

LIABILITIES, RESERVES AND CAPITAL

Liabilities	\$ 860,107.00
Reserves:	
Required to provide benefits set forth in Paragraph 13(c) of foregoing proposal	\$10,525,000.00
Required for Losses and Claims in force	19,643,031.00 30,168,031.00
Total Liabilities & Reserves	<u>\$31,028,138.00</u>
Capital Stock	
Class A Common—254,100 sh. par value \$1	
Class B Common—254,100 sh. par value \$1	508,573.17
*Deferred Surplus	7,500,000.00
Total Liabilities, Reserves & Capital	<u>\$39,037,711.17</u>

3573

*The deferred surplus represents the future payments of \$500,000 per year to be paid by the Transamerica group in accordance with the terms of the foregoing proposal. In addition, there is a future deferred surplus not reflected in the above statement, consisting of 50% of the profits of the Accident and Health Department of the Life Company payable in accordance with the terms of the foregoing proposal.

Proposal by Transamerica group via Giannini.

Filed Oct. 17, 1936, 11:55 a. m. L. E. Lamp-
ton, county clerk; by J. C. Gordon, deputy.

3574 [TITLE OF COURT AND CAUSE.]

**Appearance and Objections to Petition for
Approval of Rehabilitation and Reinsur-
ance Agreement.**

Pursuant to the petition for approval of reha-
bilitation and reinsurance agreement of Samuel
L. Carpenter, Jr., as Insurance Commissioner of
the State of California, and in response to the
order to show cause with respect thereto and on
file herein, the undersigned, appearing on his own
behalf, alleges:

I.

That the undersigned is the owner and holder
of The Pacific Mutual Life Insurance Company
of California Non-Cancellable Income Policy No.
4642998, form A 292, issued under date of Octo-
ber 30, 1923, providing for the payment to the
undersigned, under the terms and conditions in
said policy set forth, of the sum of two hundred
dollars (\$200.00) per month. That said policy
has been by the undersigned maintained in con-
tinuous force and effect since the date of issu-
ance thereof, by and upon the payment of annual
premiums as they have respectively matured, and
said policy is now in force and effect and all pre-
miums thereon have been so paid so as to render
such policy a subsisting contract until October
30, 1937. That the undersigned has not become
disabled within the meaning of said policy, and
has received no disability benefits thereunder.

3577

II.

The undersigned does hereby object to the plan of the Insurance Commissioner of the State of California as embodied in said "Rehabilitation and Reinsurance Agreement" dated as of July 22, 1936, as amended, upon grounds, among others, as follows:

3578

1. That the Commissioner seeks approval of this court for the organization by him of a new life insurance company having a name substantially similar to the name of the respondent herein, with a capital of \$3,000,000 paid in from the assets of the respondent, the old company, whereas one or more new companies could have been, and can be organized, for the purpose of reinsuring and carrying on all phases of the respondent's business under a plan calling for the contribution of new capital to such departments of said business as may be in need thereof, and without charging such capital contribution against the

3579

assets of the respondent. In the judgment of the undersigned it is necessary for the protection of all policy holders of respondent, particularly the holders of non-cancellable income policies, that such new company or companies be organized to assume the liabilities of the respondent and carry on the business thereof with a new and different management, and with a corporate name or names totally different and distinct from that of the respondent as a means of overcoming sales and other resistance arising from the difficulties

3580 in which respondent finds itself. In the judgment of the undersigned the difficulties involving the respondent have utterly destroyed and rendered valueless its good will.

2. The undersigned furthermore objects to that part of the Commissioner's plan which calls for a moratorium upon cash surrender values and policy loans, and states that the organization of one or more new companies to take over all phases of respondent's business, with a contribution of new and additional capital under new management, will render a moratorium on policy loans and cash surrender values unnecessary. 3581 The undersigned states he is the owner of one or more policies of life insurance issued by the respondent, all of which policies are in good standing.

3. The plan of the Commissioner with respect to the Pacific Mutual Life Insurance Company (the New Company) reinsuring and assuming the liabilities of the respondent, the Old Company, under all non-cancellable policies, is arbitrary, capricious, unfair and discriminatory to the holders of such policies. The undersigned furthermore states that under a plan calling for the organization of a new company, with new and additional capital and under new management, the liability of the respondent under its non-cancellable income policies can be reinsured to far greater benefit and advantage to the hold- 3582

3583 ers of non-cancellable policies than under the plan of the Commissioner, which makes no provision for the contribution of new capital to the New Company or any other proposed organization.

Wherefore, the undersigned, as the holder of one or more policies issued by the respondent, prays that the plan of said Insurance Commissioner as embodied in the "Rehabilitation and Reinsurance Agreement," dated as of July 22, 3584 1936, as amended, and as annexed as Exhibit A to the Commissioner's petition for approval of rehabilitation and reinsurance agreement be disapproved, and that consideration be given by this court to such plan or plans as may be presented for the reinsurance of the liabilities of the respondent by the organization of one or more companies under new and different management, under new corporate names and by and with the contribution of new and additional capital.

3585

HERBERT FRESTON,
(Herbert Freston)

In Propria Persona.

Verified.

Endorsed: Received copy of the within appearance & objections this 19 day of Oct., 1936. U. S. Webb, attorney general; John L. Flynn, deputy, attorneys for petitioner.

Filed Oct. 19, 1936, 9:31 a. m. L. E. Lamp-ton, county clerk; by J. C. Gordon, deputy.

3586 [TITLE OF COURT AND CAUSE.]

**Appearance and Answer of Respondents
Hereinafter Named, to the Petition and
Order to Show Cause Heretofore Issued
by the Above Entitled Court.**

Come now the respondents hereinafter named,
on behalf of each of them and on behalf of all
other holders of non-cancellable income accident
and health policies of the Pacific Mutual Life
3587 Insurance Company of California, a corporation,
and oppose and object to the above entitled court
making all or any of the orders referred to and
described in that certain order to show cause
with respect to rehabilitation and reinsurance of
the Pacific Mutual Life Insurance Company of
California, a corporation, issued on the 25th day
of September, 1936, by Honorable Henry M.
Willis, judge of the above entitled court:

I.

3588 That heretofore, to-wit, on the 20th day of
August, 1936, there appeared in the above en-
titled action respondents G. C. Parsons, J. A.
Marvin and G. R. Snider, as owners and holders
of non-cancellable income policies of the Pacific
Mutual Life Insurance Company of California,
a corporation, hereinafter referred to as Pacific
Mutual Company, and as members of and as a
protective committee for holders of non-cancell-
able income policies of said Pacific Mutual Com-

3589 pany; that said respondents have appeared through their counsel at every subsequent hearing of said matter before said court, and at all hearings and meetings of the conference committee appointed and/or approved by the above entitled court for the purpose of working out a plan of reorganization and rehabilitation of said Pacific Mutual Company.

II.

3590 That said respondents above named, as individuals and as members of said committee, and as said committee, now make answer to and state their objections to the said order to show cause above named.

III.

3591 That the following respondents, all of whom have joined with a large number of other persons similarly situated, whose names are too numerous to be mentioned and set forth herein, as members of said protective committee for holders of non-cancellable income policies of the said Pacific Mutual Company, also state their protest and objections to the granting or making of said orders and matters referred to in said order to show cause issued on the said 25th day of September, 1936. That the names and addresses and the policy numbers of said respondents are as follows:

3592	Name	Address	Policy Number
	F. M. Lillie,	369 Lexington Ave., New York, N. Y.	4644539
	J. H. Carlson,	116 John St., New York, N. Y.	5500045
	Clarence F. Corner,	c/o Andrew J. Kellock, 15 East 49 St., New York, N. Y.	5606147
3593	J. Forgione,	c/o Andrew J. Kellock, 15 East 49 St., New York, N. Y.	4659881
	H. M. Goldblatt,	30 Rockefeller Plaza, New York, N. Y.	4628477
	G. E. Reinbrecht,	c/o D. H. Ward, 225 Bway., New York, N. Y.	5600245
	G. D. Strayer,	c/o D. H. Ward, 225 Bway., New York, N. Y.	2658687
	A. S. Wing,	c/o D. H. Ward, 225 Bway., New York, N. Y.	4612491
3594	C. E. Muchmore,	60 East 42 St., New York, N. Y.	4628397
	J. H. Grover,	St. Louis Union Trust Co., St. Louis, Mo.	4616433
	Charles Selig,	100 East 42 St., New York, N. Y.	5500144
	J. M. Gambrill,	Columbia Univer- sity, New York, N. Y.	2668721

- 3595** E. H. Dendel, 16 Columbia Terrace,
Weehawken, N. J. 2659194
- W. J. Hallowell, Drawer 960, Man-
chester, New Hampshire 5613137
- D. K. Rose, 150 Nassau St., New
York, N. Y. 5611646
- Oscar Brown, 30 Rockefeller Plaza 5627704
- W. W. Kistler, MD, 142 Hanover
St., Wilkes-Barre, Pa.
- 3596** L. W. Sloan, MD, Presbyterian
Medical Center, New York,
N. Y. 5635071
- R. A. Hurd, MD, 210 East 68 St.,
New York, N. Y. 4628702
- A. R. Penfield, Waldorf Paper
Prods. Co., St. Paul, Minn. 4641053
- Beaven, Jos. C., 88 Lexington Ave.,
New York, N. Y. 5625565
- 3597** Gray, C. H. G., 463 West St.,
New York, N. Y. 5500332
- Gruger, F. R., 124 E. 28th St.,
New York, N. Y. 5606248
- Keating, W. L., 80 Broad St., New
York, N. Y. 5625565
- Lincoln, S. B., 30 Rockefeller Pl.,
New York, N. Y. 5620416
- Marvin, J. A., 100 Broadway, New
York, N. Y.

- 3598 Needham, W. R., 500 Fifth Ave.,
New York, N. Y. 5507229
- Parsons, G. C., 225 Broadway, New
York, N. Y. 5521506
- Perry, Glen H., 280 Broadway,
New York, N. Y. 5515588
- Pittman, E. W., 75 Varick St.,
New York, N. Y. 5613536
- Pratt, F. M., 8 East 13th St.,
3599 New York, N. Y. 5507110
- Rankin, R. S., 195 Broadway, New
York, N. Y. 5507277-8
- Snider, G. R., 55 Cedar St., New
York, N. Y. 5620470-1
- Summers, D. G., 304 Ridgewood
Rd., South Orange, N. J. 5600474
- Yuill, A. J., 60 Broad St., New
York, N. Y. 5500268
- 3600 Bull, Wellington, 120 Broadway
- Bowman, Harold S., 122 E. 42
St., New York, N. Y. 4623782
- Bush, W. P. D., American Ins. Co.,
Greensboro, N. C. 4656778
- Martin, B. R., 400 E. Genesee St.,
Syracuse, N. Y. 4621869
- Haines, E. F., 124 St. James Ave.,
Merchantville, N. J. 4612871

- 3601 Farrow, E. S., 230 Cobbs Hill
Drive, Rochester, N. Y. 4662150
- Jordan, F. F., 400 Madison Ave.,
New York, N. Y.
- Brown, Arthur L., 1 Broadway,
New York, N. Y. 4648495
- Rodriguez, Arthur, 701 First Ave.,
New York, N. Y. 4659996
- Crampton, Dr. C. W., 515 Park
Ave., New York, N. Y.
- 3602 Baehr, George, 110 East 80 St.,
New York, N. Y. 4625408
- Rothenburg, L. M., 1397 Union
St., Brooklyn, N. Y. 4637916
- Brown, L. Howland, 71 Broadway,
New York, N. Y. 2669118
- Block, J. Horace, 50 Broadway,
New York, N. Y. 4618665
- 3603 Lee, Paul P., 120 Broadway, New
York, N. Y. 4650244-5-6
4650232
- Matteson, L. J., 99 John St., New
York, N. Y. 4628221
- Herstein, Karl M., 18 East 41 St.,
New York, N. Y. 5515750
- Lohse, Willis R., c/o C. Missall,
155 East 42 St., New York,
N. Y. 6501060

- 3604 Crawford, Walter F., 32 Sixth
Ave., New York, N. Y. 5521518
- Updike, Harold W., 3429-80 St.,
Jackson Heights, N. Y. 5606294
- Kay, C. Rob't., 25 Prospect Place,
New York, N. Y. 5625116
- Lyon, Chas. C., 185 Market St.,
Newark, N. J.
- Poole, Arthur Bensell, 30 Rocke-
feller Plaza, New York, N. Y. 5508057-8
- 3605 Kohberger, Dr. H. P., 118 S. Neg-
ley Ave., Pittsburgh, Pa.
- Donahue, John M., 123 Wilshire
Rd., Brighton, N. Y.
- Kelley, F. M., 641 Onondaga
County Savings Bank Bldg.,
Syracuse, N. Y. 4657383
- Apple, John F., Jr., 60 Beaver St.,
New York, N. Y. 5500366
- 3606 Berman, Hyman, 16 Court Street,
Brooklyn, N. Y. 5521653
- Sloan, E. D., P. O. Box 954, Green-
ville, S. C. 4641405
- Hotaling, Elmer E., 527 Fifth Ave.,
New York, N. Y. 4628769
- Ryer, Elmer LeRoy, 527 Fifth
Ave., New York, N. Y. 4628096
- Connor, Jerome N., 40 West 40 St.,
New York, N. Y. 5606314

- 3607 Updegraff, Robt. R., Harwood
Bldg., Scarsdale, N. Y. 4603325
- Landis, Dr. Carney, 722 West 168
St., New York, N. Y. 5500253
- Pickering, Harold G., 20 Pine
Street, New York, N. Y. 4643474
- Frazer, Marc, 420 Lexington Ave.,
New York, N. Y. 4641381
- Eberhardt, John B., c/o Jones &
Jones, 50 Church St., New York,
3608 N. Y. 4628219
- Parsons, Bruce, 111 W. Washing-
ton St., Chicago, Ill. 5517278
- Colville, Ralph E., Montgomery
Ward, Chicago, Illinois 381135
- Schumaker, S. O., 417 Second Natl.
Bldg., Akron, Ohio
- Smith, H. L., Payne Shoemaker
Bldg., Harrisburg, Pa.
- 3609 Porter, J. R., 214 Walton Bldg.,
Atlanta, Ga. 5615052
- Frey, C. J., Erie Trust Bldg.,
Erie, Pa. 5506517-8
- McDaniel, H. C. Waldorf Paper
Prods., St. Paul, Miss. 4618804
- Tompkins, H. D., 1790 Broadway,
New York, N. Y. 5606401
- Kaplan, J. G., 225 Broadway, New
York, N. Y. 5620304

- 3610** Count, Jerome, 285 Madison Ave.,
New York, N. Y. 5600398
- Zane, Edward R., Piedmont Bldg.,
Greensboro, N. C. 4662993-4
- Bickelhaupt, L. J., 360 Broadway,
Saratoga Springs, N. Y. 5502868
- Fern, Fred S., Graybar Bldg.,
New York, N. Y. 5500001
- Hamlin, Clay W., 17 Court St.,
Buffalo, N. Y. 4647693
- 3611** Gassaway, F. G., Wilmington, Dela-
ware 4625730
- Nottingham, W. S., Indemnity Ins.
Co. of North America, Roches-
ter, New York 5600413
- Scribner, Chas. E., 20 Exchange
Place, New York, N. Y. 4621807
- Lamb, Karl B., Tenafly, New Jer-
sey 4659823-4
- 3612** 4612480
- Atchley, Dana W., Box 266,
Newburyport, Mass.
- McMann, R. H., 12 Warren St.,
New York, N. Y. 5500153
- Dr. C. R. Smathers, 110½ Buffalo
Street, Johnson City, Tennessee 4655372
5503748
- Hiram W. Johnson, Jr., Mills Build-
ing, San Francisco, Cal. 5627138

3613

IV.

That the said policies termed non-cancellable accident and health, or non-cancellable income policies of said Pacific Mutual Company are substantially identical as to their terms and benefits and that the holders of said non-cancellable policies aggregate approximately forty-nine thousand, and that they are all of one class with substantially identical interests and are too numerous to be named herein, or to join individually in objecting to the making of the said orders designated and enumerated in said order to show cause above referred to and that these respondents appear for and on behalf of themselves individually and on behalf of the other policyholders holding non-cancellable accident and health or non-cancellable income policies of said Pacific Mutual Company, and ask that any relief granted herein shall be for the benefit of all of said class.

3615

V.

Respondents hereto annex a plan of reorganization and rehabilitation of the Pacific Mutual Company, proposed and offered by what is termed the Transamerica group, said proposal and offer being made by said Transamerica group by and through L. M. Giannini, and marked Exhibit "A"; respondents hereto annex and make a part of this pleading the said proposal and

3616 offer of said Transamerica group, as if the said proposal and offer were herein set forth in detail.

VI.

Respondents, in their personal; individual and representative capacity, and representing as a class the non-cancellable policyholders, pray the court to reject the plan of reorganization and rehabilitation heretofore filed by the above named petitioner as Insurance Commissioner of the State of California, and as conservator of the Pacific Mutual Company, and to substitute and approve in its place and stead the offer and proposal of the said Transamerica group hereto annexed. Respondents respectfully urge that said offer and proposal of said Transamerica group be accepted for the following reasons:

1. That said offer and proposal will cause to be paid in excess of twelve million dollars new capital and credit, which will be of great and immediate benefit to the holders of all classes of policies of insurance in the Pacific Mutual Company, and particularly for the holders and owners of the non-cancellable accident and health or non-cancellable income policies.

2. That the proposal and offer of the said Transamerica group will more certainly and surely restore the full benefits to holders of said non-cancellable policies, and make such restoration within a shorter period of time, than that

3619 contemplated in the proposal of the conservator
or any other plan before the court.

3. That the said proposal and offer of the Transamerica group will give greater financial and business stability to all classes of policies of the Pacific Mutual Company, than any plan now before the court.

3620 4. That the immediate benefits and returns to the holders ~~and~~ owners of non-cancellable policies are much greater than is promised or assured by any plan now before the court.

5. That the plan and offer of said Transamerica group to form two new corporations as set forth in said Exhibit "A" gives greater assurance of future success in the securing of new insurance and operation of a new company than any plan now before the court.

3621 6. That the future success of the said new companies depends upon public confidence; that confidence must be maintained by the present holders of all classes of policies in said Pacific Mutual Company, and that said offer and proposal will inspire existing policyholders to retain their policies and induce members of the public to enter into new and additional contracts of insurance, of all classes, in far greater numbers and amounts than in any plan now before the court.

7. That the said offer and proposal does away with the said moratorium and *permits* the

3622 participating and non-participating policyholders of the Pacific Mutual Company to the full and unrestricted benefits of their contracts of insurance.

8. That the proposal and offer of said Transamerica group by the investment of new capital as hereinabove set forth, gives the policyholders of all classes of said Pacific Mutual Company greater security, inspires more confidence and assures to the non-cancellable policyholder more prompt restoration of benefits than any plan now before the court.

9. That said offer and proposal, without further detailing and specifying or particularizing its advantages, is equitable, financially sound, and of greater benefit to the policyholders of all classes of said Pacific Mutual Company and particularly to the holders of non-cancellable policies than any plan now before the court.

VII.

3624 Respondents further allege that in their opinion the Pacific Mutual Company and any successor to said company bearing the same name will be unable to successfully compete with other life insurance and accident and health companies transacting business in California and throughout the United States, because of the reputation said company bears with holders of life insurance and prospective purchasers thereof, for its failure to live up to and its repudia-

3625 tion of its contracts of insurance, as is evidenced by the petition herein and plan of rehabilitation and reorganization of the conservator on file in the above entitled court.

VIII.

That each and all of the above named respondents are policyholders of the said Pacific Mutual Company, and have paid their respective premiums and hold valid and binding policies of insurance in the said Pacific Mutual Company.

3626

IX.

That your respondents are opposed to any liquidation of the said Pacific Mutual Company, by insolvency or other proceedings, which will result, directly or indirectly, in the distribution of the assets of said Pacific Mutual Company among its policyholders and stockholders.

X.

3627 Respondents pray the court to permit said respondents by and through their counsel, to present testimony, both written, oral and documentary, or in any other manner or form approved by said court, to establish the advantages of the said offer and proposal contained in Exhibit "A", and its points of superiority over any other plan submitted to or now before the above entitled court.

XI.

Answering paragraphs III, IV, V, VI, VII and VIII of the said petition of petitioner here-

3628 in, respondents do not possess sufficient information or belief as to the allegations contained and set forth in each of said paragraphs, and for lack of sufficient information or belief, deny each and every allegation contained in each of said paragraphs.

Wherefore, your respondents pray:

3629 That the above entitled court approve and, by proper order of court, authorize the execution of contracts containing substantially the terms, contained in said offer and proposal as set forth in Exhibit A; and for such other and further relief as may be for the best interests of all classes of policyholders of said Pacific Mutual Company, particularly the non-cancellable policyholders, including your respondents herein, to the end that full public confidence in life insurance be restored, and the greatest benefits and returns be assured the holders of all classes of policies of said *Pacific Life Insurance Company*.

3630

CHAPMAN, SNIDER, DUKE AND LANDIS,
55 Cedar Street,
New York City, New York.

HIRAM W. JOHNSON, JR.,
Mills Building,
San Francisco, California.

FRANK P. DOHERTY,
433 South Spring Street,
Los Angeles, California.

By FRANK P. DOHERTY,

Attorneys for Respondents.

3631

EXHIBIT "A"

PROPOSAL TO REINSURE THE BUSINESS OF THE
PACIFIC MUTUAL LIFE INSURANCE COM-
PANY OF CALIFORNIA

The plan hereinafter outlined contemplates the organization of two corporations under the laws of the State of California. Said companies will be appropriately named, each will be under separate and independent management, and will be referred to herein as the "Life Company" and the "Accident Company." The Transamerica group, of which the Occidental Life Insurance Company is a part, will pay to said corporations an aggregate of \$12,108,200.00. The Accident Company will receive a portion of the profits of the Life Company.

The Pacific Mutual Life Insurance Company of California will be hereinafter designated as "Pacific Mutual." Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, as Conservator of The Pacific Mutual Life Insurance Company of California, will be hereinafter referred to as "Conservator." The Superior Court of the State of California in and for the County of Los Angeles will be hereinafter referred to as "The Court." Non-cellable Income Policies will be hereinafter referred to as "Non-Can policies." The term

3634 "Commissioner" shall mean the present Insurance Commissioner of the State of California or his successor in office.

The Life Company

1. The Life Company shall have a capital of \$1,000,000, together with a surplus of \$2,000,000, said amounts, aggregating \$3,000,000, to be paid into the company by the Transamerica group.

3635 2. The Life Company will reinsure and assume the liabilities of the Pacific Mutual under all policies and contracts of insurance, except Non-Can policies, issued or assumed by the Pacific Mutual and outstanding and in force on July 22, 1936, or issued by the Conservator, subject; however, to any and all offsets, rights and defenses then or thereafter existing against said policies or contracts of insurance which would have been available to the Pacific Mutual or the Conservator. Liabilities under Non-Can policies are expressly excluded from the obligations assumed by the Life Company.

3636 3. (a) The Life Company will agree to reinsure and assume, upon the terms and conditions hereinafter set forth, all policies other than Non-Can policies, which have lapsed, upon the reinstatement thereof in accordance with the terms and conditions of each such policy.

(b) The foregoing paragraph (a) is modified to the extent that any policy, other than a

3637 Non-Can policy, lapsed since July 22, 1936, will be reinstated during the life-time of the insured, provided the insured is not in such condition as to be eligible for benefits under his policy, without evidence of insurability, on written application therefor by the insured and payment of all premiums in arrears, if such application is made and premiums are paid within seventy-five (75) days after the approval by the Court of the reinsurance agreement contemplated by this
3638 proposal.

(c) Upon the reinstatement of a lapsed policy it shall for all purposes be treated (but only from and after the date of reinstatement) the same as if it had been in force on the effective date of the reinsurance agreement contemplated herein, and shall be subject to the terms and conditions of said agreement.

4. The Life Company will pay in full all valid unpaid claims under policies issued or assumed by the Pacific Mutual, other than Non-Can policies, and all claims arising under the policies reinsured by it, and all liabilities which are incident to such policies, subject, however, to any and all defenses, offsets or counterclaims which would have been available to the Pacific Mutual or to the Conservator.
3639

5. (a) The Conservator shall sell, assign, convey and transfer, or cause to be sold, assigned, conveyed and transferred to the Life

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3640 Company, vesting title thereto in the Life Company free and clear of encumbrances, tax or other liens or adverse claims, Pacific Mutual assets equal in value to the aggregate sum of the legal reserves required for the policies and contracts reinsured by the Life Company and such other liabilities assumed by the Life Company in its reinsurance agreement.

3641 (b) All of the Pacific Mutual assets to be acquired by the Life Company, as hereinabove set forth, shall be taken at values to be determined and fixed by mutual agreement between the Conservator and the Transamerica group. Any assets upon the value of which the Conservator and said Transamerica group cannot agree, shall be valued by a board of three appraisers, two of whom shall be appointed by the Court and the third by the Transamerica group. Assets to be transferred and set over to the Life Company shall be selected by the Conservator **3642** and approved by the Transamerica group, at values agreed upon as aforesaid or determined by said appraisers, as the case may be.

(c) The amount of the reserves required for the business reinsured and the value of the assets to be acquired by the Life Company shall be fixed and determined as of the effective date of the contemplated reinsurance agreement.

(d) On the assumption that the amount of the required reserves and the value of assets will

3643 be approximately the same on the effective date of the proposed reinsurance agreement as the asset values and reserves set forth in the Convention Examination Report as of December 31, 1935, the attached schedules, designated Schedule A and Schedule A-1, will reflect the approximate amount of assets to be acquired, the approximate amount of required reserves, the approximate amount of liabilities to be assumed, and the capital structure of the Life Company.

3644 6. The Life Company will engage in a general life, accident and health insurance business and will segregate its business by establishing three departments, namely: (1) Participating Life Insurance Department; (2) Non-participating Life Insurance Department; and (3) General Accident and Health Insurance Department. To each department will be allocated a portion of the Pacific Mutual assets acquired by the Life Company equal in value to the amount of reserves and liabilities of such department. The selection of assets allocated to each department shall be made by the Conservator and approved by the Transamerica group.

3645 7. The Life Company will assume no claims or liabilities of any kind or nature against the Pacific Mutual or the Conservator other than those hereinabove set forth. The Life Company will pay to the Conservator such amount of money, if any, hereafter paid by the Conservator

3646 in satisfaction of claims filed by dissenting holders of policies reinsured under the terms of this proposal and allowed by the Court. There shall be no moratorium on policy loans or surrenders for cash value.

8. Representation on the Board of Directors of the Life Company will be offered to interested groups of policyholders and agents; and in the conduct of its business the Life Company will retain all satisfactory employees of the Pacific
3647 Mutual.

9. The Life Company will enter into equitable agency agreements with such agents of the Pacific Mutual as desire to become associated with the Life Company, and so long as any such agent remains in the service of the Life Company, renewal commissions will be paid such agent on policies written by him for the Pacific Mutual and reinsured by the Life Company, in
3648 accordance with the terms and provisions of his Pacific Mutual agency contract covering such business. In computing commissions under Pacific Mutual agency contracts policies reinsured by the Life Company shall be considered a continuation of existing policies and not the writing of new business.

10. The Life Company will pay to the Accident Company fifty percent (50%) of the net profits of the business of its Accident Department, payments to be made in annual install-

3649 ments, subject to the terms and conditions and
termination of such payments, as hereinafter set
forth.

The Accident Company

11. The capital stock of the Accident Com-
pany will consist of 254,100 shares of Class A
common stock and 254,100 shares of Class B.
common stock. All of said stock shall be of the
par value of \$1.00 per share and shall have the
3650 same voting and dividend rights. The Trans-
america group will pay \$508,200 for said stock,
totaling 508,200 shares, and will deliver all of
the Class A stock to the stockholders of the
Pacific Mutual on terms and conditions to be
set forth in the contemplated reinsurance agree-
ment. Class A common stock shall be callable
at any time within ten (10) years at \$30 per
share. In the event of liquidation of the Acci-
dent Company after restoration of full benefits
3651 and agents' commissions, Class A stock shall
participate in the distribution of assets to the ex-
tent of \$10 per share, after which the Class B
stock shall participate in such distribution of as-
sets to the extent of \$10 per share, and there-
after both classes of stock shall participate
equally in any distribution of assets.

12. In addition to the payment of \$508,200
as set forth in the preceding paragraph, the
Transamerica group will pay to the Accident
Company \$1,100,000 and will make further pay-

3652 ments to the Accident Company of a sum not exceeding \$7,500,000, at the rate of \$500,000 per year, subject to the terms and conditions hereinafter set forth.

13. (a) The Accident Company will assume and reinsure liabilities of the Pacific Mutual and the Conservator under all Non-Can Accident and Health policies issued by the Pacific Mutual and in force on the effective date of the agreement contemplated by this proposal, subject to the policy terms and conditions and also to the terms, conditions and limitations, and only to the extent, hereinafter specifically provided, and subject also to any and all claims defenses, actions and rights in connection therewith, which would have been available to the Pacific Mutual or the Conservator.

3654 (b) The Accident Company will pay, without deduction, every valid claim for disability benefits under any such policy for disability arising prior to July 22, 1936, with respect to which claim or notice of claim was duly filed in accordance with the terms of the policy on or before August 12, 1936, and will likewise pay all liabilities, without deduction, under settlement agreements made by the Pacific Mutual with claimant under any such policy. All such claims are subject, however, to all defenses and rights which would have been available to the Pacific Mutual or to the Conservator.

(c) As to all other claims for disability benefits under Non-Can policies, now pending or hereafter arising, the Accident Company's liability in any such case shall be limited to the percentage of the monthly disability benefits set forth in the following schedule:

Prem. Class	Issued Under Rate Books	Policy Forms	Issued Under Policy Nos.	Percentage of Original Monthly Benefit Assumed New Company
1918	A1445-A1445Z A1445Y-A1445X A1445W	A231 to A286, inc.	2658601 to 2698150 4600501 to 4628000 4711101 to 4712600 4730901 to 4731100	50%
1921	A1687-A1687Z A1687Y-A1687X A1687W	A291 to A294 inc. A365 - A366	4628001 to 4700000	59%
1926	A1958-A1958Z	A382-A383 A386-A387 A387Z	5500001 to 5600000	65%
1929	A2293	A382-A383 A386-A387 A387Z	5600001 to 5620000	72%
1931	A2367	A753 to A756, inc. A763 - A764	5620001 to 5635000	78%
1932	A2432-A2432Z A2499 A2499	A775 to A780, inc. Aggregate A1216 to A1221, inc.	5635001 to 6000000 6500001 to 7000000	93%
1935	A2567	Aggregate A1226 to A1229, inc.	7000001 to 7100000	93%

3658 Benefits under all such policies shall be reduced to the extent indicated in the foregoing schedule but shall be subject to restoration of monthly benefits as hereinafter provided.

(d) Notwithstanding the reduction in benefits and the limitation of the obligation of the Accident Company to make monthly disability payments, as set forth in the preceding paragraph, each holder of any such policy, to be entitled to the benefit of the proposed reinsurance agreement, shall be obligated to continue payment of premiums in the amount stipulated in his policy.

3659

14. (a) At the end of five (5) years from the effective date of the contemplated reinsurance agreement, or at such earlier date as may be fixed by the Commissioner, the reserve requirements shall be recomputed and if reserves and funds available for reserves are then sufficient to justify an increase in the schedule of benefits set forth in paragraph 13(c) hereof, benefit payments on claims then in force at reduced rates and benefits on future claims will be increased to a rate approved by the Commissioner. Thereafter, redetermination of reserve requirements and available reserves for the purpose of adjusting benefit rates shall be made from time to time upon request of the Accident Company or the Commissioner, to the end that full benefit

3660

3661 payments under said policies may ultimately be restored.

(b) Surplus of the Accident Company (not including funds received from the Life Company representing a share of the net profits of its Accident and Health Department) not required for the successful conduct and operation of its business, shall be used for the purpose of restoring benefits under all policies not in benefit and increasing future payments under policies in benefit. Such available funds shall from time to time be added to the reserves for such policies until such time as adequate reserves have been established from the full restoration of such policies, at which time the Accident Company will fully assume and reinsure all such policies not in benefit, and at said time said policies not in benefit shall be deemed to be fully restored.

3663 (c) Funds received from the Life Company, representing one-half of the net profits of its Accident and Health Department, shall be used exclusively for the purpose of making up deficiency in payments of disability benefits to claimants who have been paid less than they were entitled to receive under their policies as originally written.

After policies not in benefit shall have been fully reinsured and a surplus of \$2,500,000 shall have been accumulated for Class A stock, all surplus funds of the Accident Company not re-

3664 quired for the successful conduct and operation of its business, shall be used for the purpose of making up deficiency in payments of disability benefits to claimants who have been paid less than they were entitled to receive under their policies as originally written.

(d) The Accident Company shall not be required to pay or restore full benefits under policies as originally written, except in the manner and to the extent hereinabove set forth.

3665 (e) The Transamerica group agrees to make certain payments to the Accident Company for a period of fifteen (15) years, as set forth in paragraph 12 hereof. Whenever, prior to the expiration of said fifteen year period, full restoration of benefits, not including deficiencies in benefit installments previously paid, shall have been made and there has been full restoration of commissions to agents, and the Accident Company shall have accumulated a surplus of \$2,-

3666 500,000 for its Class A stock, then upon the happening of those events, the Transamerica group will be released from its obligation to make any further payments. Transamerica group reserves the right to make payment at any time prior to the expiration of said fifteen year period of an amount sufficient to provide a surplus of \$2,-500,000 for the Class A stock after providing for full restoration of benefits, not including deficiencies in benefit installments previously

3667 paid, and agents' commissions and upon the making of such payment Transamerica group will be released from its obligation to make any further payments.

Upon full restoration of benefits, payment of deficiencies in benefit installments previously paid and restoration of commissions to agents, the Life Company will be released from its obligation to pay to the Accident Company a portion of the net profits of the Accident and Health
3668 Department.

No dividends shall be paid to stockholders of the Accident Company until after full restoration of benefits, payment of deficiencies in benefit installments previously paid and restoration of commissions to agents.

(f) The basis to be used in determining the adequacy of reserves shall be the New York Standard Table, with the variable factor limited
3669 to the actual experience of the Pacific Mutual and/or the Accident Company with Non-Can Accident and Health insurance, or such other table or basis as shall be required by the laws of the State of California.

15. All of the Pacific Mutual assets not transferred and delivered to the Life Company, and the proceeds of any claim, right or cause of action collected by the Conservator, shall be transferred, assigned and conveyed to the Accident Company.

3670 16. On the assumption that the value of the assets and the required reserves will be approximately the same on the effective date of the proposed reinsurance agreement as the asset values and reserves set forth in the Convention Examination Report as of December 31, 1935, the attached schedules, designated Schedule A and Schedule B, indicate the approximate amount of assets to be taken over by the Accident Company, the approximate amount of required reserves, the approximate amount of liabilities to be assumed and reinsured by the Accident Company, and the capital structure of the Accident Company. The proposal to pay benefits, on claims arising subsequent to July 2, 1936, according to the schedule of reduced benefits hereinabove set forth, is based upon the figures and statistics contained in the Convention Examination Report of the business and condition of the Pacific Mutual as of December 31, 1935, 3671 and shall be subject to examination, verification, adjustment and extension of the data contained in said report, to the effective date of the agreement contemplated by this proposal. 3672

17. Representation on the Board of Directors of the Accident Company will be offered to interested groups of policyholders and agents; and in the conduct of its business the Accident Company will retain all satisfactory employees of the Pacific Mutual.

3673 18. The Accident Company shall have the right to engage in a general accident and health insurance business.

19. The Accident Company will enter into equitable agreements with such agents of the Pacific Mutual as desire to become associated with the Accident Company, and so long as any such agent remains in the service of the Accident Company, renewal commissions will be paid
3674 such agent on policies written by him for the Pacific Mutual and reinsured by the Accident Company, in accordance with the terms and provisions of his Pacific Mutual agency contract covering such business, as herein modified. This proposal contemplates the temporary payment of disability benefits under the Non-Can policies on a reduced basis. It is believed that agents are interested in the restoration of full
3675 benefit payments under Non-Can policies at the earliest practicable date and, to that end, are willing to cooperate with proponent by deferring payment of a part of their commissions which would otherwise be payable to them. It is proposed that commissions payable to agents on Non-Can policies shall be adjusted by a reduction thereof corresponding to the percentage of reduction of benefit payments in effect

3676 for each class of policies as shown in the schedule hereinabove set forth. As the rate of benefit payments under policies is increased, commissions to agents will at the same time be correspondingly increased.

20. The Accident Company will agree to pay the Conservator a sum equal to all legal and valid claims filed with the Conservator and allowed by the Court, except valid claims of any
3677 character which may be allowed by the Court and paid by the Conservator prior to the transfer and delivery of Pacific Mutual assets to the Accident Company. In the event that claims of any kind not specifically assumed by the Life Company and not arising out of the business transacted by said Company on its own account, shall be asserted against the Life Company and the Life Company shall be required by the final
3678 judgment of any court of competent jurisdiction to pay or discharge such claims, or in case the Life Company is made a party defendant in any suit or suits arising out of the pending proceedings, the Accident Company shall reimburse the Life Company for all amounts so determined and paid and also its reasonable costs and expenses incurred in connection with any such litigation.

3679 The foregoing sets forth the essential features of the plan of the Transamerica group for the reinsurance of the business of the Pacific Mutual. If this proposal is accepted, appropriate agreements will be prepared and executed which will clearly and definitely express the intentions and the obligations of the parties thereto. In addition to the matters outlined in this proposal such agreements will contain such other provisions as may be mutually agreed upon by the 3680 Conservator and the Transamerica group, including such provisions as are usually contained in reinsurance agreements.

If, in the opinion of the Conservator and the Court, the proposal hereinabove outlined can be modified so as to facilitate and make more effective its purposes, the Transamerica group will 3681 give careful and sympathetic consideration to any suggestions for the improvements of its general plan, to the end that all interested persons, and particularly policyholders in all groups, may be accorded treatment that is as fair, just and equitable as it is possible to secure under all the circumstances.

Dated at Los Angeles, California, October 17, 1936.

L. M. GIANNINI

3682

Schedule A-1

NEW LIFE COMPANY

OPENING FINANCIAL STATEMENT, ASSUMING
ASSETS AND RESERVES CORRESPONDING IN
AMOUNT WITH AMOUNTS CONTAINED IN
SCHEDULE A

ASSETS

3683	Cash-Paid in By Transamerica Group	\$ 3,000,000.00
	Net Assets - Life Dept.	182,178,026.60
	Net Assets - Acc. & Health Dept.	2,809,664.33
		<hr/>
	Total Assets	\$187,987,690.93

3684

LIABILITIES, RESERVES AND CAPITAL

	Total Liabilities and Reserves	184,987,690.93
	Capital Stock	1,000,000.00
	Paid-In Surplus	2,000,000.00
		<hr/>
	Total Liabilities, Reserves and Capital	\$187,987,690.93

3685

Schedule B

ACCIDENT COMPANY OPENING FINANCIAL
STATEMENT

3686

ASSUMING ASSETS CORRESPONDING IN
AMOUNTS WITH AMOUNTS CONTAINED IN
SCHEDULE A, AND USING RESERVES RE-
QUIRED TO MAINTAIN BENEFIT PAY-
MENTS ON NON-CANCELLABLE POLICIES
AT THE RATES SET FORTH IN PARAGRAPH
13 (c) OF THE FOREGOING PROPOSAL

ASSETS

3687 Cash paid in by Transamerica Group under foregoing proposal	\$ 1,608,200.00
° Deferred Receivables	7,500,000.00
Other Net Assets	29,929,511.17
Total Assets	<u>\$39,037,711.17</u>

3688

LIABILITIES, RESERVES AND CAPITAL

Liabilities	\$ 860,107.00
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Reserves:

Required to provide benefits set forth in Paragraph 13 (c) of foregoing proposal	\$10,525,000.00
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Required for Loss and Claims in force	19,643,031.00	30,168,031.00
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3689

Total Liabilities & Reserves	<u>31,028,138.00</u>
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Capital Stock

Class A Common - 254,100 sh. par value \$1	
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Class B Common - 254,100 sh. par value \$1	509,573.17
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°Deferred Surplus	7,500,000.00
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3690

Total Liabilities, Reserves & Capital	<u>\$39,037,711.17</u>
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°The deferred surplus represents the future payments of \$500,000 per year to be paid by the Transamerica group in accordance with the terms of the foregoing proposal. In addition, there is a further deferred surplus not reflected in the above statement, consisting of 50% of the profits of the Accident and Health Department of the Life Company payable in accordance with the terms of the foregoing proposal.

3691

Schedule A

**THE PACIFIC MUTUAL LIFE INSURANCE COMPANY OF
CALIFORNIA**

Schedule of Net Assets, Liabilities and Surplus or Deficit for Life, General Accident and Health (exclusive of non-can), and Non-cancellable Accident & Health Departments

Constructed from Convention Examination Report - December 31, 1935

3692

LIFE	ACCIDENT & HEALTH NON-CAN	TOTAL
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3693

Net Assets	\$187,893,222.60	\$27,023,979.50	\$214,917,202.10
Net Reserves:			
For Policies & Ann.	154,989,200.00		154,989,200.00
Unearned Prem.	\$1,107,357.25	1,796,570.87	2,903,928.12
Non-can policies		24,685,977.00	24,685,977.00
Losses & Claims	1,343,558.00	19,643,031.00	21,676,767.00
Disability	10,120,656.00		10,120,656.00
Sup. Contracts	5,718,710.00		5,718,710.00
Est. Claim Exp. Liab.	38,858.00	824,481.00	863,339.00
Com. Payable	104,400.00	35,626.00	140,026.00
Asset Val. Reserves	2,103,349.94	440,000.00	2,543,349.94
Taxes Accrued	570,560.52	204,223.27	774,783.79
Other Liab.	7,331,992.14	224,647.81	7,556,639.95

694	Total Liabilities and Reserves	182,178,026.60	2,809,664.33	46,985,685.87	231,973,376.80
		<hr/>	<hr/>	<hr/>	<hr/>
	Surplus or *deficit	5,715,196.00	*2,809,664.33	*19,961,706.37	*17,056,174.70
	Surplus Assets in Life Dept. to be transferred to Acc. & Health & Non- can Departments	5,715,196.00	2,809,664.33	2,905,531.67	
695	*Deficit			*17,056,174.70	*17,056,174.70
		<hr/>	<hr/>	<hr/>	<hr/>
	Assets for Each Dept. after trans- ferring Life Dept. Surplus Assets to Acc. Dept.	182,178,026.60	2,809,664.33	29,929,511.17	214,917,202.10

(*Refers to deficit)^o

696

Verified.

Endorsed: Received copy of the within ap-
pearance this 19 day of October, 1936. U. S.
Webb et al, attorneys for petitioner, by Frank
L. Guerena.

Filed 9:55 a. m. , Oct. 19, 1936. L. E. Lamp-
ton, county clerk; by M. Zimmerman, deputy.

3697 In the Superior Court of the state of California, in and for the county of Los Angeles:

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, respondent, Pacific Mutual Life Insurance Company, intervenor. No. 404673.

3698 **Return of Alfred F. MacDonald to Order to Show Cause.**

Comes now Alfred F. MacDonald, a policy holder and person interested in the above entitled proceedings and files this, his return to the order to show cause issued by the above entitled court on the 25th day of September, 1936, and his objections to the proceedings in said cause, as follows:

3699

I.

That at all times herein mentioned, objector was and now is, the owner and holder of Non-cancellable Income Policy Number 5514395 (Form A 383) issued by the Pacific Mutual Life Insurance Company of California, the respondent above named; that all premiums due upon the policy aforesaid have been paid and said policy is now in full force and effect.

8700

II.

Objector objects to the

a. Ratifying, confirming and approving the act of said conservator in causing to be formed, forming, and subscribing to and purchasing the capital stock of, Pacific Mutual Life Insurance Company, a California corporation;

8701

b. Ratifying, confirming and approving the transfer and conveyances heretofore made of the assets, properties, books and records of The Pacific Mutual Life Insurance Company of California to Pacific Mutual Life Insurance Company;

8702

c. Ratifying, confirming and approving a Rehabilitation and Reinsurance Agreement, dated July 22, 1936, with such amendments as may be proposed prior to or at the hearing hereon as provided in said petition, proposed to be executed by and between said conservator and said Pacific Mutual Life Insurance Company (a copy of which said agreement is attached to the petition of said conservator for the within order to show cause) and authorizing and directing said conservator to execute and enter into said agreement.

III.

The objections aforesaid are made upon the following grounds, to-wit:

a. That the proposed plan of rehabilitation is not the best possible plan for the protection of

3703 this objector and other policy holders in The Pacific Mutual Life Insurance Company of California, similarly situated;

b. That said plan, if adopted or approved by this court, will render the policy owned and held by this objector, practically worthless;

c. That said plan undertakes to substitute some fractional liability by the Pacific Mutual Life Insurance Company for the obligations of The Pacific Mutual Life Insurance Company of California, to this objector;

d. That said plan, if carried out, would constitute a violation of this objector's rights under sections 7, 11, 13, 16, 21 and 22 of Article 1 and section 1 of Article 3, and section 1 of Article 12 of the Constitution of the state of California, and also section 1 of the 14th Amendment to the Constitution of the United States of America.

3705

IV.

This objector objects to any plan or scheme which would impair in any manner or way, the obligation of this objector's contract with The Pacific Mutual Life Insurance Company of California.

V.

This objector objects to all proceedings and orders heretofore or hereafter made by the above

3706 entitled court in the above proceeding on the ground that each, every and all of the laws and statutes upon which such proceedings or orders were based, are, and each of them is, unconstitutional and void.

VI.

3707 Objector objects to each, every and all of the orders heretofore made in the above entitled proceeding on the grounds and for the reason that the true facts of the case could not and would not justify the making of said order.

Wherefore, this objector prays that the objections hereinbefore taken to the proceedings in the above entitled matter be allowed and sustained and that appropriate orders be made by the above entitled court setting aside and vacating each, every and all of the orders heretofore made 3708 in the above entitled proceedings and restoring this objector to the same status that he occupied before said proceedings were instituted.

ALFRED F. MACDONALD,

In Propria Persona

Endorsed: Filed Oct. 19, 1936, 10:19 a. m.
L. E. Lampton, county clerk; by E. T. Crozier,
deputy.

3709 [TITLE OF COURT AND CAUSE.]

Return.

Comes now Harry Bryant Robinson, Frank Clement Robinson, Milo F. Smith, Wales Mac Perdue, policy holders and persons interested in the above entitled proceedings and file through their attorney, Henry C. Huntington, their return to the order to show cause issued by the above entitled court on the 25th day of September, 1936,
3710 and their objections to the proceedings in said cause, as follows:

I.

That at all times herein mentioned, each objector was and now is, the owner and holder of a Non-cancellable Income Policy issued by the Pacific Mutual Life Insurance Company of California, the respondent above named, as follows, to-wit:

3711 Harry Bryant Robinson, Policy No. 4612675,
issued April 1, 1921;

Frank Clement Robinson, Policy No. 4622388,
issued August 31, 1921;

Milo F. Smith, Policy No. 774795;

Wales Mac Perdue, Policy No. 4647283 and
Policy No. 536351;

that all premiums due upon the policies aforesaid have been paid and said policies are now in full force and effect.

3712

II.

Objectors object to the

a. Ratifying, confirming and approving the acts of said conservator in causing to be formed, forming, and subscribing to and purchasing the capital stock of, Pacific Mutual Life Insurance Company, a California corporation;

3713

b. Ratifying, confirming and approving the transfer and conveyances heretofore made of the assets, properties, books and records of The Pacific Mutual Life Insurance Company of California to Pacific Mutual Life Insurance Company;

3714

c. Ratifying, confirming and approving a Rehabilitation and Reinsurance Agreement, dated July 22, 1936, with such amendments as may be proposed prior to or at the hearing hereon as provided in said petition, proposed to be executed by and between said conservator and said Pacific Mutual Life Insurance Company (a copy of which said agreement is attached to the petition of said conservator for the within order to show cause) and authorizing and directing said conservator to execute and enter into said agreement.

III.

The objections aforesaid are made upon the following grounds, to-wit:

a. That the proposed plan of rehabilitation is not the best possible plan for the protection of

3715 these objectors and other policy holders in The Pacific Mutual Life Insurance Company of California, similarly situated;

b. That said plan, if adopted or approved by this court, will render the policies owned and held by these objectors practically worthless;

3716 c. That said plan undertakes to substitute some fractional liability by the Pacific Mutual Life Insurance Company for the obligations of The Pacific Mutual Life Insurance Company of California, to these objectors;

d. That said plan, if carried out, would constitute a violation of these objectors' rights under sections 7, 11, 13, 16, 21 and 22 of Article 1 and section 1 of Article 3, and section 1 of Article 12 of the Constitution of the state of California, and also section 1 of the 14th Amendment to the Constitution of the United States of America.

3717

IV.

These objectors object to any plan or scheme which would impair in any manner or way, the obligation of these objectors' contract with The Pacific Mutual Life Insurance Company of California.

V.

These objectors object to all proceedings and orders heretofore or hereafter made by the above entitled court in the above proceeding on the

3718 ground that each, every and all of the laws and statutes upon which such proceedings or orders were based, are, and each of them is, unconstitutional and void.

VI.

3719 Objectors object to each, every and all of the orders heretofore made in the above entitled proceeding on the grounds and for the reason that the true facts of the case could not and would not justify the making of said order.

Wherefore, these objectors pray that the objections heretofore taken to the proceedings in the above entitled matter be allowed and sustained and that appropriate orders be made by the above entitled court setting aside and vacating each, every and all of the orders heretofore made in the above entitled proceedings and restoring these 3720 objectors to the same status that they occupied before said proceedings were instituted.

HENRY C. HUNTINGTON,

HENRY C. HUNTINGTON,

Attorney for Policy Holders.

Endorsed: Filed Oct. 19, 1936, 10:19 a. m.
L. E. Lampton, county clerk; by E. T. Crozier,
deputy.

3721 [TITLE OF COURT AND CAUSE.]

Return of Austin O. Martin to Order to Show Cause.

Comes now Austin O. Martin, a policy holder and person interested in the above entitled proceedings, and files through his attorney, Rex Hardy, Esq., this, his return to the order to show cause heretofore issued by the above entitled court on the 23rd day of July, 1936, and his objections to the proceedings in said cause are as follows:

I.

That at all times herein mentioned this objector was and now is the owner and holder of non-cancellable income policy No. 4602219, issued September 20, 1920 by the Pacific Mutual Life Insurance Company of California; that all premiums heretofore accruing and due upon said policy have been paid and by the terms thereof, said policy is now in full force and effect.

II.

This objector now and hereby objects to—

(a) The confirming and approving and ratifying of the permission given with respect to that certain plan and agreement of rehabilitation, sale and transfer of assets and the reinsurance of the respondent herein, which said plan and

8724 agreement of rehabilitation is referred to in the order to show cause issued herein on July 23, 1936, and the carrying out of the terms and provisions thereof;

8725 (b) The confirming and approving of the action of Samuel L. Carpenter, Jr., as the Insurance Commissioner of the state of California, and as liquidator and conservator of the respondent herein, and the action of the intervener herein in making, executing and carrying out of that certain agreement provided for in said plan and agreement;

(c) The confirming and approving of the execution and delivery of the deed and bill of sale attached to the petition of the petitioner herein for the purpose of transferring and setting over to the intervener herein all of the 8726 assets of the respondent herein;

(d) Each and every and all of the proceedings had and taken up to and including the issuance of said order to show cause on the 23rd day of July, 1936, by the Honorable Douglas L. Edmonds, judge of the above entitled court;

(e) Each and every and all of the proceedings proposed to be taken and had in connection with the above *entitle* proceedings.

3727

III.

The objections hereinbefore made are upon the following grounds, to-wit:

(a) That said permission and the order given in respect to said plan and the agreement of rehabilitation is unlawful and void for the reason that no proper hearing thereof has been had as required by the laws of the state of California;

3728

(b) That the proposed plan of rehabilitation is not the best possible plan for the protection of this objector and other policy holders of the respondent similarly situated;

(c) That said plan, if adopted or approved by this court will render the policy owned and held by this objector practically worthless;

3729

(d) That said plan undertakes to substitute some fractional liability of the intervener for the obligations of the respondent to this objector;

(e) That said plan, if carried out, will constitute a violation of the objector's rights under the Constitutions of the state of California and of the United States of America.

IV.

That this objector objects to any plan or scheme which would impair in any manner or

3730 way the obligations of the contracts held by this objector with respondent.

V.

3731 That this objector objects to all proceedings or orders heretofore or hereafter to be made by the above entitled court in the above proceedings upon the ground that each and every and all of the laws and statutes upon which such proceedings and orders were and are based, are, and each of them is, unconstitutional and void.

VI.

3732 That this objector objects to each and every and all of the orders heretofore made in the above entitled proceeding upon the grounds and for the reasons that the true facts in this case could not and would not justify the making of said orders and tend to depreciate and impair the obligations of the respondent to this objector upon the contract held by this objector as aforesaid, because of which this objector has for many years paid large sums of money to the respondent upon its obligations therein expressed.

VII.

That this objector hereby refers to the objections heretofore or hereafter to be filed by other persons in a similar situation and to all com-

3733 complaints in intervention heretofore or hereafter to be filed by persons in a similar situation, all in respect to the above entitled proceedings and by such reference hereby adopts each and all of said objections and said interventions and incorporates the same as a part of this return.

3734 Wherefore, this objector prays that the objections hereinabove taken be allowed and sustained and that appropriate orders be made by the above entitled court, setting aside and vacating each and every and all of the orders heretofore made in the above entitled proceedings and restoring this objector to the same status that he occupied before said proceedings were instituted and leaving to this objector his rights and privileges and benefits as in said contract of insurance specified.

REX HARDY,

3735 *Attorney for Objector, Austin O. Martin.*

Verified.

Endorsed: Received copy of the within return this 19th day of October, 1936. Mitchell, Silberberg & Knupp, attorneys for petitioner.

Filed Oct. 19, 1936, 4:53 p. m. L. E. Lamp-ton, county clerk; by J. C. Gordon, deputy.

3736 [TITLE OF COURT AND CAUSE.]

Return of Rex Hardy to Order to Show Cause.

Comes now Rex Hardy, a policyholder and person interested in the above entitled proceedings, and files in *propria persona* this, his return to the order to show cause heretofore issued by the above entitled court on the 23rd day 3737 of July, 1936, and his objections to the proceedings in said cause are as follows:

I.

That at all times herein mentioned this objector was and now is the owner and holder of three (3) certain non-cancellable income policies, as follows:

No. 4647743, Form A292, issued April 30, 3738 1935;

No. 4647744, issued April 30, 1924;

No. 5503407, issued December 24, 1926;

all by the Pacific Mutual Life Insurance Company of California; that all premiums heretofore accruing and due upon each and all of the policies aforesaid have been paid and by the terms of each thereof, said policies are now in full force and effect.

3739

II.

This objector now and hereby objects to the—

(a) Confirming and approving and ratifying the permission given with respect to that certain plan and agreement of rehabilitation, sale and transfer of assets and the reinsurance of the respondent herein, which said plan and agreement of rehabilitation is referred to in the order to show cause issued herein on July 23, 1936, and the carrying out of the terms and provisions thereof:

3740

(b) Confirming and approving of the action of Samuel L. Carpenter, Jr., as the Insurance Commissioner of the State of California, and as liquidator and conservator of the respondent herein, and the action of the intervener herein in making, executing and carrying out of that certain agreement provided for in said plan and agreement;

3741

(c) The confirming and approving of the execution and delivery of the deed and bill of sale attached to the petition of the petitioner herein for the purpose of transferring and setting over to the intervener herein all of the assets of the respondent herein;

(d) Each and every and all of the proceedings had and taken up to and including the issuance of said order to show cause on the 23rd day of July, 1936, by the Honorable Douglas L. Edmonds, judge of the above entitled court;

- 3742 (e) Each and every and all of the proceedings proposed to be taken and had in connection with the above entitled proceedings.

III.

The objections hereinbefore made are upon the following grounds, to-wit:

- 3743 (a) That said permission and the order given in respect to said plan and the agreement of rehabilitation is unlawful and void for the reason that no proper hearing thereof has been had as required by the laws of the State of California;

(b) That the proposed plan of rehabilitation is not the best possible plan for the protection of this objector and other policyholders of the respondent similarly situated;

(c) That said plan, if adopted or approved by this court, will render the policy owned and held by this objector practically worthless;

- 3744 (d) That said plan undertakes to substitute some fractional liability of the intervenor for the obligation of the respondent to this objector;

(e) That said plan, if carried out, will constitute a violation of this objector's rights under the Constitution of the State of California and of the United States of America.

IV.

That this objector objects to any plan or scheme which would impair in any manner or

3745 way the obligations of the contracts held by this
objector with respondent.

V.

That this objector objects to all proceedings
or orders heretofore or hereafter to be made by
the above entitled court in the above proceed-
ings upon the ground that each and every and
all of the laws and statutes upon which such
proceedings and orders were and are based, are,
and each of them is, unconstitutional and void.

3746

VI.

That this objector objects to each and every
and all of the orders heretofore made in the
above entitled proceeding upon the grounds and
for the reasons that the true facts in this case
could not and would not justify the making of
said orders and tend to depreciate and impair
the obligations of the respondent to this ob-
jector upon the contracts held by this objector
as aforesaid, because of which this objector has
for many years paid large sums of money to the
respondent upon its obligations therein ex-
pressed.

3747

VII.

That this objector hereby refers to the ob-
jections heretofore or hereafter to be filed by
other persons in a similar situation and to all
complaints in intervention heretofore or here-
after to be filed by persons in a similar situ-

3748 ation, all in respect to the above entitled proceedings and by such reference hereby adopts each and all of said objections and said interventions and incorporates the same as a part of this return.

3749 Wherefore, this objector prays that the objections hereinabove taken be allowed and sustained and that appropriate orders be made by the above entitled court, setting aside and vacating each and every and all of the orders heretofore made in the above entitled proceedings and restoring this objector to the same status that he occupied before said proceedings were instituted and leaving to this objector his rights and privileges and benefits as in each and all of the hereinbefore mentioned contracts of insurance specified.

3750

REX HARDY,

In Propria Persona.

Verified.

Endorsed: Received copy of the within return this 19th day of October, 1936. Mitchell, Silberberg & Knupp, attorneys for petitioner.

Filed Oct. 19, 1936, 4:53 p. m. L. E. Lampton, county clerk; by J. C. Gordon, deputy.

3751 In the Superior Court of the State of California in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., etc., petitioner, vs.
The Pacific Mutual Life Insurance Company of
California, respondents. No. 404673.

Objections of Roscoe R. Hess to Rehabilitation and Reinsurance Agreement.

3752 Comes now Roscoe R. Hess, a non-cancellable policyholder in the respondent corporation, and party in interest in the above entitled matter, and appearing in response to the order to show cause with respect to rehabilitation and reinsurance, dated September 25, 1936, respectfully alleges, represents and by way of objection to the orders proposed to be made as recited in said order to show cause, objects as follows:

I.

3753 That the undersigned is the owner and holder of two "non-can policies," as said term is defined in the proposed Rehabilitation and Reinsurance Agreement referred to in paragraph #3 of said order to show cause, which policies are in full force and effect, and are numbered and dated as follows:

No. 4610222 dated June 1, 1921

No. 4619043 dated July 21, 1921

That the undersigned has a contingent claim against the "Old Company," contingent upon

3754 payment by premiums by undersigned on said policies according to their terms, and the happening of events and disabilities therein mentioned.

II.

That he objects to the making of each and all of the orders described in said order to show cause upon the following grounds:

3755 A. That the conservator is without authority in law to organize or to subscribe to the stock of any corporation or to use the assets of an insolvent insurance company for the purpose of organizing a new insurance company or to purchase the stock in such new company and that the court is without authority to authorize the organization of a new company as provided for in said orders and in said so-called Rehabilitation and Reinsurance Agreement.

3756 B. That the moneys which said Insurance Commissioner proposes to use for the purchase of said stock, all properly belong to and are a part of the assets of the Old Company, and that the Insurance Commissioner is without power or authority to use any of such assets for the purpose of protecting the interests of policyholders of one class as against those of another class.

C. That neither the Insurance Commissioner nor the court has the power or authority to prefer one class of policyholders over another class.

3757 D. That said Rehabilitation and Reinsurance Agreement is discriminatory and prefers certain classes of policyholders, to-wit: the life policyholders as against non-cans; that, in fact, all other policies issued by the Old Company are re-insured by the New Company for the full face amount thereof, excepting only the non-cans, whose benefits are reduced to certain fixed percentages, ranging from 20% to 90%; that such
3758 unequal and discriminatory treatment of said policyholders is inequitable and contrary to law, preferring what, in legal effect, are certain classes of creditors as against another class of creditors, without any basis in law therefor.

E. That the objection set forth in the preceding paragraph "D" hereof, is not overcome by the provisions of said Rehabilitation and Reinsurance Agreement, providing for possible future restoration of benefits to said non-cans out of certain profits of said New Company; that
3759 all of the other policyholders are re-insured in full under the agreement at the present time and are not required to postpone any enjoyment of their rights and privileges and the receipt of the benefits called for by their policies, but only this one class of policies is required to do so; that so far as restoration of benefits to the non-cans in the future is concerned, under said Rehabilitation and Reinsurance Agreement, such restoration is left entirely discretionary with the Board of Directors of said New Company as set forth

- 3760 in paragraph #14, page #18 of said Rehabilitation and Reinsurance Agreement, except that the Commissioner may at the time of any examination of the New Company require the transfer of additional funds to the special fund from which restoration of benefits may be declared by the Board of Directors. The inevitable, if not the intended, result of such discretionary power permitting the Board of Directors to use the funds available for its general corporate business to accumulate a large surplus, is to postpone the restoration of benefits to the non-cans, causing lapsations of non-can policies. The fact that the surplus is accumulated, thereby adding value to the non-cans and involving a necessary restoration at some time in the future, will not prevent such lapsation because the average non-can policyholder will look to the benefits which are being actually paid to non-cans who become disabled to ascertain whether or not it is worth while to continue the payment of premiums. Since the plan as proposed to the court is the work largely of the Commissioner and representatives of stockholders, the conclusion is almost inescapable that the administration of the plan, like the design and intent thereof, is bound to favor the interests of the stockholders which will be promoted by such lapsations.
- 3762 F. That the Insurance Commissioner and the court are, and that each of them is, without

3763 power to prefer one class of policyholders over another class, and that said attempted sale of assets is a sale in name only and is made for the purpose of accomplishing in an apparently legal manner that which it is unlawful to do.

G. That the court has no power to prefer holders of life insurance policies in The Pacific Mutual Life Insurance Company of California, over holders of non-cancellable income policies in the same company.

3764 H. That said Insurance Commissioner is without power to enter into a contract of reinsurance which prefers one class of risks over another.

I. That the Insurance Commissioner is without power to part with the assets securing the contracts of insurance of The Pacific Mutual Life Insurance Company of California, without reinsuring the risks covered thereby, and that he is without power to reinsure a part only of the risks.

3765

J. That the orders herein sought to be ratified are unjust, unconscionable and inequitable.

K. That the orders herein sought to be ratified permitting the transfer of the assets of the insolvent company to a new company and the absence of provisions for reinsurance of non-can policies upon a basis commensurate with reinsurance of other policies violates Section 10, Article I of and the Fourteenth Amendment of

3766 the Constitution of the United States, and Article I, Section 21, of the Constitution of the State of California.

L. That your objector has filed a proposed plan of rehabilitation in court and refers to the same as though fully set forth herein and alleges that said plan is more equitable to all persons involved than said agreement proposed by the Commissioner.

3767

M. That the Insurance Commissioner has no authority to reinsure or to rehabilitate except subject to such liens as may be equitably necessary as provided in Section 1043 of the Insurance Code; that the purposes of said section are in accordance with the usual practice where there is an impairment of the reserves of a life insurance company; that in order to make good such impairment, it is equitably necessary to place or impose a lien upon all policies alike, and thereupon to permit the insolvent company to continue business as a going concern.

3768

N. That the Rehabilitation and Reinsurance Agreement is inequitable in providing for reinsurance of non-can policies on a reduced basis in Conservatorship and thereby automatically reducing the amount of their claims in the event of a subsequent order of liquidation, in which

3769 event the rights of non-can policyholders are fixed as of the date of the entry of the order of liquidation in the office of the county clerk pursuant to Section 1019 of the Insurance Code.

O. That the Rehabilitation and Reinsurance Agreement provides no valid method for the determination or payment of claims of creditors or non-can policyholders who do not accept reinsurance under the agreement and provides no immediately available fund therefor.

3770 Wherefore your objector prays that the petition for approval of the Rehabilitation and Reinsurance Agreement be denied and that none of said orders set forth in the order to show cause be made.

Respectfully submitted,

ROSCOE R. HESS,

DAVID R. RUBIN,

Attorneys for said Objector.

3771

Endorsed: Received copy of the within objections this 19 day of October, 1936. U. S. Webb, Atty. Gen.; Frank L. Guereña; Mitchell, Silberberg & Knupp, per Peery Price, attorney.. for plttf.

Filed Oct. 19, 1936. L. E. Lampton, county clerk; by R. J. Curtis, deputy.

3772 In the Superior Court of the State of California in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation respondent, and Carroll C. Day, Harry C. Fabling, Joseph M. Gantz, Jack Paschall and Ralph J. Wetzel, respondents and interveners. No. 404673.

3773 Return on Order to Show Cause With Respect to Rehabilitation and Reinsurance.

Leave of court so to do first being had and obtained, the respondents and interveners above named, upon their own behalf and upon behalf of each of them, and upon behalf of all general agents and managers of The Pacific Mutual Life Insurance Company of California, a corporation, respondent herein, intervene herein and file this their return on order to show cause with

3774 respect to rehabilitation and reinsurance of date September 25, 1936.

I.

Respondents and each of them adopt and incorporate herein as though in this paragraph fully set forth, and by such adoption and incorporation allege as a part of this return, each of the allegations, denials and admissions contained in paragraphs I to VII, inclusive, of that certain complaint in intervention of The Pacific

3775 Mutual Agency, an association, filed herein on, to wit, the 28th day of August, 1936.

II.

That respondent C. C. Day on, to-wit, the 20th day of August, 1910, entered into a contract with said respondent company, or Old Company, under and pursuant to the terms and provisions of which contract said respondent was appointed and since said date has continuously continued to act in the states of Oklahoma and Kansas as general agent of said Old Company for the purpose of securing life insurance contracts for and on behalf of said Old Company with residents of said territory, and during said period and on behalf of said Old Company, under the terms of said contract, has secured many such contracts of life insurance; that by reason thereof and pursuant to the terms of said contract, said respondent is entitled to receive and heretofore has received from said Old Company, or respondent company, commissions in various amounts of money, amounting to many thousands of dollars annually, on various policies of life insurance and upon various contracts of insurance, all of which have been secured, closed, completed and/or written by and/or on behalf of said respondent company or Old Company at the instance of and as the result of the industry, ability and negotiations conducted by said respondent C. C. Day and/or by subagents of said

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3778 respondent company acting under and at the direction of said respondent C. C. Day.

That said respondent C. C. Day, under the terms of said contract with said Old Company, is entitled to receive, and prior to the 22nd day of July, 1936, had been receiving, commissions upon renewals of said contracts or policies of life insurance theretofore procured by him as said agent of said Old Company. That the commissions upon said renewals to which said respondent is entitled amount annually to a large sum of money, to wit, to a sum in excess of twenty-five thousand dollars (\$25,000.00).

III.

That respondent Harry C. Fabling on, to wit, the 21st day of November, 1906, entered into a contract with said respondent company, or Old Company, under and pursuant to the terms and provisions of which contract said respondent was appointed and since said date has continuously continued to act in the states of Colorado and Wyoming as general agent of said Old Company for the purpose of securing life insurance contracts for and on behalf of said Old Company with residents of said territory, and during said period and on behalf of said Old Company, under the terms of said contract, has secured many such contracts of life insurance; that by reason thereof and pursuant to the terms of said contract, said respondent is entitled to receive and

- 3781 heretofore has received from said Old Company, or respondent company, commissions in various amounts of money, amounting to many thousands of dollars annually, on various policies of life insurance and upon various contracts of insurance, all of which have been secured, closed, completed and/or written by and/or on behalf of said respondent company, or Old Company, at the instance of and as the result of the industry, ability and negotiations conducted by said respondent Harry C. Fabling and/or by subagents of said respondent company acting under and at the direction of said Harry C. Fabling.

- That said respondent Harry C. Fabling, under the terms of said contract with said Old Company, is entitled to receive and prior to the 22nd day of July, 1936, has been receiving, commissions upon renewals of said contracts or policies of life insurance theretofore procured by him as said agent of said Old Company. That the commissions upon said renewals to which said respondent is entitled amount annually to a large sum of money, to wit, to a sum in excess of twenty-five thousand dollars. (\$25,000.00).
- 3783

IV.

That respondent Joseph M. Gantz on, to wit, the 23rd day of April, 1918, entered into a contract with said respondent company, or Old Company, under and pursuant to the terms and provisions of which contract said respondent was

- 3784 appointed and since said date has continuously continued to act in the states of Ohio and Kentucky as general agent of said Old Company for the purpose of securing life insurance contracts for and on behalf of said Old Company with residents of said territory, and during said period and on behalf of said Old Company, under the terms of said contract, has secured many such contracts of life insurance; that by reason thereof and pursuant to the terms of said contract,
- 3785 said respondent is entitled to receive and heretofore has received from said Old Company, or respondent company, commissions in various amounts of money, amounting to many thousands of dollars annually, on various policies of life insurance and upon various contracts of insurance, all of which have been secured, closed, completed and/or written by and/or on behalf of said respondent company, or Old Company, at the instance of and as the result of the industry, ability and negotiations conducted by said
- 3786 respondent Joseph M. Gantz and/or by sub-agents of said respondent company acting under and at the direction of said respondent Joseph M. Gantz.

That said respondent Joseph M. Gantz, under the terms of said contract with said Old Company, is entitled to receive, and prior to the 22nd day of July, 1936, had been receiving, commissions upon renewals of said contracts or policies

3787 of life insurance theretofore procured by him as said agent of said Old Company. That the commissions upon said renewals to which said respondent is entitled amount annually to a large sum of money, to wit, to a sum in excess of twenty-five thousand dollars (\$25,000.00).

V.

3788 That respondent Jack Paschall on, to wit, the 5th day of March, 1909, entered into a contract with said respondent company, or Old Company, under and pursuant to the terms and provisions of which contract said respondent was appointed and since said date has continuously continued to act in the state of California as general agent of said Old Company for the purpose of securing commercial and non-cancellable contracts of insurance for and on behalf of said Old Company with residents of said territory, and during said period and on behalf of said Old Company, under 3789 the terms of said contract, has secured many such contracts of commercial insurance; that by reason thereof and pursuant to the terms of said contract, said respondent is entitled to receive and heretofore has received from said Old Company, or respondent company, commissions in various amounts of money, amounting to many thousands of dollars annually, on various policies of commercial insurance, all of which have been secured, closed, completed and/or written by and/or on behalf of said respondent company or

3790 Old Company at the instance of and as the result of the industry, ability and negotiations conducted by said respondent Jack Paschall and/or by sub-agents of said respondent company acting under and at the direction of said respondent Jack Paschall.

3791 That said respondent Jack Paschall, under the terms of said contract with said Old Company, is entitled to receive, and prior to the 22nd day of July, 1936, had been receiving, commissions upon renewals of said contracts or policies of commercial insurance theretofore procured by him as said agent of said Old Company. That the commissions upon said renewals to which said respondent is entitled amount annually to a large sum of money, to wit, to a sum in excess of twenty-five thousand dollars (\$25,000.00).

VI.

3792 That respondent Ralph J. Wetzel on, to wit, the 16th day of April, 1923, entered into a contract with said respondent company, or Old Company, under and pursuant to the terms and provisions of which contract said respondent was appointed and since said date has continuously continued to act in the states of Missouri and Kansas as general agent of said Old Company for the purpose of securing life insurance contracts for and on behalf of said Old Company with residents of said territory, and during said period and on behalf of said Old Company, under

3793 the terms of said contract, has secured many such contracts of life insurance; that by reason thereof and pursuant to the terms of said contract, said respondent is entitled to receive and heretofore has received from said Old Company, or respondent company, commissions in various amounts of money, amounting to many thousands of dollars annually, on various policies of life insurance and upon various contracts of in-

3794 surance, all of which have been secured, closed, completed and/or written by and/or on behalf of said respondent company or Old Company, at the instance of and as the result of the industry, ability and negotiations conducted by said respondent Ralph J. Wetzel and/or by subagents of said respondent company acting under and at the direction of said respondent Ralph J. Wetzel.

3795 That said respondent Ralph J. Wetzel, under the terms of said contract with said Old Company, is entitled to receive, and prior to the 22nd day of July, 1936, had been receiving, commissions upon renewals of said contracts or policies of life insurance theretofore procured by him as said agent of said Old Company. That the commissions upon said renewals to which said respondent is entitled amount annually to a large sum of money, to wit, to a sum in excess of twenty-five thousand dollars (\$25,000.00).

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VII.

That respondent, Carroll C. Day, is named as the insured in and is the holder of those certain policies of life insurance issued by respondent, The Pacific Mutual Life Insurance Company of California, a corporation of policy numbers and date of issuance and in the amounts as follows:

	Policy Number	Date of Issue	Amount
3797	(1) 253470	1/11/33	\$ 2,500.00
	(2) 265215	2/ 3/32	2,500.00
	(3) 277598	1/28/33	8,700.00
	(4) 445812	1/ 5/33	5,000.00
	(5) 445813	1/ 5/33	2,500.00
	(6) 445814	1/ 5/33	2,500.00
	(7) 583862	6/25/34	25,000.00
	(8) 666723	6/28/34	25,000.00
	(9) 737888	7/25/34	10,000.00
	(10) 779876	1/14/31	10,000.00
	(11) 807263	12/22/31	10,000.00

3798

That said respondent is also named as the insured in and is the owner and holder of non-cancelable income policy number 4642392, dated October 16, 1923, providing for the payment of indemnity of \$300.00 per month during the continuance of disability resulting from accidental means or sickness and consisting of a continuous total loss of business time.

That all premiums heretofore coming due on each of said policies have been fully paid, and on

3799 July 22, 1936, each of said policies was and still is in full force, virtue and effect.

VIII.

That respondent, Harry C. Fabling, is named as the insured in and is the holder of those certain policies of life insurance issued by respondent, The Pacific Mutual Life Insurance Company of California, a corporation, of the policy numbers and date of issuance and in the amounts as follows:

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	Policy Number	Date of Issue	Amount
(1)	373492	12/12/19	\$ 1,000.00
(2)	359397	6/30/19	4,350.00
(3)	585819	7/10/25	\$10,000.00
(4)	X-612538	3/20/26	5,100.00
(5)	X-624340	6/21/26	2,000.00
(6)	727300	6/27/29	5,000.00
(7)	785675	1/26/31	10,000.00
(8)	904995	7/15/35	6,500.00

That said respondent is also named as the insured in and is the owner and holder of non-cancelable income policy number 5510648, dated September 1, 1927, providing for the payment of indemnity of \$200.00 per month during the continuance of disability resulting from accidental means or sickness and consisting of a continuous total loss of business time.

3802 That all premiums heretofore coming due on each of said policies have been fully paid, and on July 22, 1936, each of said policies was and still is in full force, virtue and effect.

IX.

That respondent, Jack Paschall, is named as the insured in and is the holder of those certain policies of life insurance issued by respondent, The Pacific Mutual Life Insurance Company of California, a corporation, of the policy numbers and date of issuance and in the amounts as follows:

	Policy Number	Date of Issue	Amount
	(1) 309564	3/10/17	\$ 8,700.00
	(2) 311996	11/29/16	3,700.00
	(3) 362350	7/11/19	5,000.00
	(4) 370284	11/10/19	2,000.00
	(5) 406831	9/28/20	10,000.00
3804	(6) 426027	5/ 3/21	15,000.00
	(7) 471373	10/ 6/22	10,000.00
	(8) 492507	5/15/23	10,000.00
	(9) 505610	7/11/23	20,000.00
	(10) 618802	5/21/26	10,000.00
	(11) 624632	6/19/26	10,000.00

That said respondent is also named as the insured in and is the owner and holder of non-cancelable income policy number 4604603, dated

3805 September 23, 1920, providing for the payment of indemnity of \$500.00 per month during the continuance of disability resulting from accidental means or sickness and consisting of a continuous total loss of business time.

That all premiums heretofore coming due on each of said policies have been fully paid, and on July 22, 1936, each of said policies was and still is in full force, virtue and effect.

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X.

That respondent, Ralph J. Wetzel, is named as the insured in and is the holder of those certain policies of life insurance issued by respondent, The Pacific Mutual Life Insurance Company of California, a corporation, of the policy numbers and date of issuance, and in the amounts as follows:

	Policy Number	Date of Issue	Amount
3807	(1) 597419	10/30/25	\$10,000.00
	(2) 620348	6/10/26	10,000.00
	(3) 680552	2/ 9/28	10,000.00
	(4) 778986	12/13/30	10,000.00

That said respondent is also named as the insured in and is the owner and holder of non-cancelable income policies, numbers 5524314 and 5524315, dated January 31, 1929, and July 31,

3808 1929, respectively, providing for the payment of indemnity of \$100.00 each per month during the continuance of disability resulting from accidental means or sickness and consisting of a continuous total loss of business time.

That all premiums heretofore coming due on each of said policies have been fully paid, and on July 22, 1936, each of said policies was and still is in full force, virtue and effect.

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XI.

That the respondents here appearing are the owners of the issued and outstanding capital stock of the respondent corporation, The Pacific Mutual Life Insurance Company of California, in an amount in excess of 6000 shares.

3810 That the general agents of said respondent corporation, who are members of the intervener, The Pacific Mutual Agency Association, and their subagents are the owners of in excess of 22,000 shares of the issued and outstanding stock of said corporation, and are the holders of 2,227 policies of life insurance issued to them by said respondent corporation, all now in full force and effect, which said 2,227 life policies are in the total or aggregate amount of \$10,163,326.00, and are also the holders of 430 non-cancelable income policies issued to them by said respondent corporation, all now in full force and effect, which said 430 non-cancelable income policies

3811 provide a total indemnity of \$64,665.00 per month.

XII.

3812 The respondents herein appearing are familiar with the provisions of that certain proposed rehabilitation and reinsurance agreement filed in the court as above entitled, on to wit: the 25th day of September, 1936, copy of which is attached as Exhibit A to that certain petition for approval of rehabilitation and reinsurance agreement filed by the petitioner in the matter as above entitled on or about said 25th day of September, 1936. That said proposed rehabilitation and reinsurance agreement is fair, just and equitable to all policyholders, to all stockholders, to all agents and subagents, and to all creditors of respondent corporation and to all of said interested parties is more fair, just and equitable than any other plan of rehabilitation and reinsurance, of which the respondents herein appearing have received copies.

3813 That said plan of rehabilitation and reinsurance proposed by the petitioner herein under date of, to wit: September 25, 1936, is the result of detailed study and attention on the part of said petitioner and his advisers, legal and actuarial, over a considerable period of time involving the

3814 analysis and examination of other plans of rehabilitation and reinsurance. That said plan so proposed by said petitioner was formulated and agreed upon following extended series of conferences conducted at the instance of the court as above entitled, at which conferences were representatives of holders of all forms of life and accident insurance policies issued by said respondent corporation, and representatives of its
3815 stockholders, general agents and creditors.

XIII.

That the delay necessarily incident to formulating another or different plan of rehabilitation or further revising or amending the proposed plan of rehabilitation without first having secured the approval of said plan as now proposed, will cause great and irreparable damage to the estate
3816 of the respondent corporation and will greatly hinder and impede the petitioner, as Insurance Commissioner of the state of California, in collecting, conserving or protecting the assets, property and business and conducting the business and affairs of said respondent corporation, and will result in loss of new business and lapsation of active policies, and will result in the loss and disintegration and disorganization of the

3817 agency force of said respondent corporation; and that the failure of this court at this time to promptly approve said plan will cause great loss and irreparable damage to the respondents herein appearing, and to each of them individually, and to each of the members of said The Pacific Mutual Agency Association and to their various subagents, and to other policyholders and stockholders of said respondent corporation.

3818

Wherefore, your respondents pray:

1. That said revised, proposed rehabilitation and reinsurance agreement submitted by the petitioner herein, on to wit: September 25, 1936, be approved in accordance with the prayer of said petition.

2. That all objections to said rehabilitation and reinsurance agreement be overruled.

3819

3. For such other and further relief as to the court shall appear just and equitable in the premises.

COSGROVE & O'NEIL,

Attorneys for Respondents.

Verified.

Endorsed: Filed Oct. 19, 1936. L. E. Lampton, county clerk; by R. J. Curtis, deputy.

3820 In the Superior Court of the state of California in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, v. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. No. 404673

Objections of Wm. H. Neblett.

3821 Comes now intervenor, Wm. H. Neblett, by his attorneys, R. Dean Warner and LeRoy B. Lorenz and in *pro persona*, and shows cause why the plan of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, acting as conservator for Pacific Mutual Life Insurance Company, called a plan of rehabilitation and reinsurance, filed herein September 26, 1936, together with all amendments thereto, should not be adopted.

3822 The whole plan is an attempted reorganization of the Old Company so as to retain the desirable assets in the same ownership, discharged of all liabilities. The title of the plan is misleading and incorrect in that it is called a rehabilitation and reinsurance. No new capital is proposed to be provided.

1. This intervenor objects to paragraphs 1 to 9 inclusive, and each of them, in the order to show cause filed September 26, 1936, and all amendments thereto, for the reason that the court is without jurisdiction to make any or

3823 either of the proposed orders set out in paragraphs 1 to 9 of the order to show cause, as the court is prohibited from making all and any of such orders by article I, section 13 of the Constitution of the state of California.

2. This intervenor objects to paragraphs 1 to 9 of the order to show cause, and all amendments thereto, on the ground that if the court should adopt all or any of the proposals set forth
3824 in paragraphs 1 to 9 of the order to show cause, it would be a denial of due process of law guaranteed to citizens of the United States by the Fifth and Fourteenth Amendments to the Federal Constitution.

3. That the proposal to make any of the orders in paragraphs 1 to 9 of the order to show cause by the court under authority of the so-called Insurance Code of the state of California
3825 would be void for the reason that the Insurance Code is repugnant both to the state Constitution, article I, section 13, and to the Federal Constitution, the Fifth and the Fourteenth Amendments thereof.

4. That the proposal to make the transfer set out in paragraphs 1 to 9 of the order to show cause, or either of them, are legally fraudulent and void within the meaning of sections 3439 and 3442 of the Civil Code of California.

- 3826 5. See points and authorities attached hereto and made a part hereof.

R. DEAN WARNER and
LEROY B. LORENZ and
WM. H. NEBLETT,

In Pro Persona,

By LEROY B. LORENZ.

POINTS AND AUTHORITIES.

- 8827 A law is unconstitutional when it deprives a citizen of his property without due process.

California Constitution, article I, section 13.

No state may pass a law, nor a state court enforce a statute which deprives a citizen of his property without due process of law.

Constitution of the United States, V and XIV Amendments.

- .3828 To separate the good assets from the bad is a violation of the rule of due process.

C. R. I. & P. Ry. Co. v. Howard, 7 Wall. 392, 19 Law Ed. 117, 121.

A fraudulent transfer within the meaning of the statutes of the state where the transfer is made, although made through the court, is a denial of due process and will be set aside.

Shapiro v. Wilgus, 287 U. S. 348, 77 Law Ed. 355.

3829 The fact that such a transfer is confirmed by the judgment of the court is unavailing.

Bank v. Flershem, 290 U. S. 504, 78 Law Ed. 465.

The transfer proposed here to be made is fraudulent on its face within the meaning of sections 3439 and 3442 of the Civil Code of California.

3830 Reincorporation under the same or a different name and the transfer of the corporate assets from an old company to a new is a fraudulent transfer.

Strahm v. Fraser, 32 Cal. App. 447.

3831 Equity will not permit the owners of one corporation to organize another and transfer from the former to the latter the corporate property without first paying the corporate debts. It is not proposed in this plan to pay any debts.

Blanc v. Paymaster Mining Co., 95 Cal. 524.

Transfer of the stock of one corporation to another in exchange for its assets without payment of all debts is one made without consideration and is void.

Kohl v. Lilienthal, 81 Cal. 378.

3832 A fraudulent transfer within the meaning of sections 3439 and 3442 of the Civil Code constitutes a crime in this state.

Penal Code, Sections 154 and 155.

They are likewise condemned by the Federal Courts.

3833 *In re Wright Motor Company*, (C. C. A. 9), 299 Fed. 106.

In California a corporation is prohibited from a reorganization so that the profitable assets are transferred to the new corporation and allowing the unprofitable ones to die on the hands of the defunct company.

3834 *Stanford Hotel Co. v. M. Schwind Co.*,
180 Cal. 348.

It is a denial of due process of law under the Federal Constitution and a fraud upon creditors to make a sale as contemplated here from the old company to the new, even though the forms of law are scrupulously observed.

Jackson v. Ludeling, 21 Wall. 616, 22
Law Ed. 492.

3835 Even though a transfer of the kind here had been made and confirmed by the court, the judgment would be set aside in a suit in equity for the legal fraud which appears on the face of the order to show cause and plan filed.

Johnson v. Waters, 111 U. S. 640, 28 L. Ed. 547, 556.

3836 Even though the court should make an order approving the plan submitted by inadvertence and mistake, when the legal fraud appearing on the face of the order is discovered, it would set aside the order on its own motion.

In re Garneau, (C. C. A. 7), 127 Fed. 677, 680.

3837 No new capital is subscribed in the plan. The plain object of the plan is to reorganize a new corporation on the wreck of the old and save what may be possible, leaving certain classes of creditors to fight for those assets considered worthless.

If these observations are not correct, then why the proceedings at all? A transfer from one corporation to another in these circumstances is held illegal by the Supreme Court when it said that such a transfer "did not gain validity when he

3838 (the vendor) transferred the business to another with a capacity for obstruction believed to be greater than his own."

Shapiro v. Wilgus, 287 U. S. 348, 77 L. Ed. 355.

That same case also holds that it is unavailing to do the same thing that is being tried here.

"A corporation created three days before the
3839 suit for the very purpose of being sued was to be interposed between its author and the creditors pursuing him, with a restraining order of the court to give check to the pursuers."

Shapiro v. Wilgus, 287 U. S. 348, 77 L. Ed. 355.

In *Shapiro v. Wilgus* the Supreme Court criticized the lower court for approving an illegal
3840 plan apparent on the face of the proposal itself. The court said:

"Perceiving that aim and indeed even declaring it, the court did not condemn it, but found it fair and lawful. In this approval of a purpose which has been condemned in Anglo-American law since the Statute of Elizabeth (13 Eliz. chap. 5), there is a misconception of the privileges and liberties vouchsafed to an embarrassed debtor."

3841 The court has found that the company is not insolvent. Reorganization is "the primary relief sought."

"The appointment of the receivers (the conservator here) and the judicial sale were the device employed to effect a transfer of the assets of the existing corporation to a new one, thereby relieving both from the payment of the former's debts."

3842 *Bank v. Flershem*, 290 U. S. 504, 78 L. Ed. 465, 474.

In *Bank v. Flershem* it was held that even though the court should approve such a plan, it would still be invalid.

3843 "The fact that the means employed to effect the fraudulent conveyance was the judgment of a court and not a voluntary transfer does not remove the taint of illegality."

Bank v. Flershem, 290 U. S. 504, 78 L. Ed. 465, 475.

Endorsed: Received copy of the within return this 19 day of Oct., 19.6. U. S. Webb, Atty. Gen.; per John L. Flynn, attorney for.....

Filed Oct. 19, 1936. L. E. Lampton, county clerk; by R. J. Curtis, deputy.

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3844

[TITLE OF COURT AND CAUSE.]

**Objections to New Plan of Rehabilitation and
Reinsurance of Respondent Company.**

Come now Neil S. McCarthy, Ralph R. Huesman, also known as Raphael Robert Huesman, and Broadtown Investment Company, a corporation, and object to the approval of the rehabilitation and reinsurance agreement as proposed by the Insurance Commissioner of California, and show to the court as follows:

3845

I.

That at all times herein mentioned the objector Ralph R. Huesman, was and is the owner and holder of the following described policies of insurance issued by the respondent, Pacific Mutual Life Insurance Company of California, a corporation, to-wit:

3846

<u>Policy No.</u>	<u>Date</u>	<u>Amount</u>	<u>Kind</u>
4793463	3/31/1933	Acct. Death \$20,000. Weekly Indemnity \$200.	Pacific Leader Accident
261430	10/ 1/1912	\$1,000.00 Paid up	20 year Life
2668332	12/31/1919	\$200. Mo.	Non-cancellable income, form A-232-Z
2659270	11/21/1919	\$300. Mo.	Non-cancellable income, form A-233
2646822	11/17/1919	Acct. Death \$10,000	Life & Limb accident
322932	9/ 1/1917	\$ 6,000.	20 yr. endowment
322933	9/ 1/1917	\$ 2,000.	20 yr. endowment
361474	7/25/1919	\$ 5,000.	20 yr. endowment
362420	7/25/1919	\$ 5,000.	20 yr. endowment
493928	4/24/1923	\$20,000.	32 yr. endowment
557508	4/24/1924	\$ 1,000.	Ordinary life.

3847

II.

That at all times herein mentioned the objector, Broadtown Investment Company, was and now is a corporation duly organized and existing under and by virtue of the laws of the state of California with its principal place of business in the city of Los Angeles, state of California, and that at all of said times was and now is the owner and holder of 216 shares of the common stock of Pacific Mutual Life Insurance Company, and

3848 a beneficiary of policies of insurance issued by said respondent, Pacific Mutual Life Insurance Company of California, a corporation, to-wit:

Policy No.	Date	Amount	Kind
411971	11/ 6/1920	\$25,000.	Ordinary life
493930	4/24/1923	25,000.	" "
569580	11/ 6/1924	25,000.	" "
771178	9/22/1930	50,000.	" "
3849 771179	9/22/1930	50,000.	" "

III.

That at all times herein mentioned the objector, Neil S. McCarthy, was and is the owner and holder of policy No. 4641696, a non-cancellable income policy, form A-292, issued by respondent.

IV.

That said proposed plan of rehabilitation and reinsurance by the commissioner is against the

3850 best interests of these policy holders and others similarly situated; that said proposed plan does not show upon its face an equitable arrangement, preserving and conserving the contract rights of these policy holders; that said plan directly destroys the force and effect of the obligation and contract heretofore entered into between said respondent, and these objectors; that said plan is discriminating against the policy holders such as are held by the above objectors; that said plan 3851 shows that it is for the special benefit of certain stockholders of said old company, and not for the interests of the policy holders of the same. That under said plan the protection and value of objectors' policies of insurance, together with all other policies of insurance issued by the old company, will be greatly lessened and impaired; that objectors allege upon information and belief that the assets of said old company may and can be sold to interested parties without any loss of any 3852 of the rights of any of the stockholders therein interested, and on a plan that will preserve and protect the full contractual rights of these objectors; that the objectors above named, holding the non-cancellable policies are particularly discriminated against, and their rights and obligations thereunder impaired.

V.

That said objectors' rights, as policy holders, are paramount to the claims of stockholders of

3853 said corporation; that the equitable rights of said policy holders, particularly the holders of non-cancellable policies, is of the very highest order for the reason, among others, that the money paid to the respondent under and on such policies was paid pursuant to the highest degree of trust, and that said policy holders have grown older since said contracts were entered into, and their rights and privileges are forever gone, except as defined and granted under said policies.

3854

VI.

Objectors allege upon information and belief that the assets of said respondent company, if properly marshalled and preserved, will be sufficient to carry into effect and abide by the terms of the specific contracts entered into with these objectors.

VII.

3855 Objectors assert that the assets of respondent company should be marshalled and impounded for the purpose of preserving and protecting objectors' rights and the rights of the creditors of said company. That if said assets are not sufficient, when marshalled and impounded to preserve and protect the contract rights of the policy holders and the creditors, that said company should be liquidated to the end that the policies issued by said respondent company be reinsured under a substantial and financially able company to fully protect their contract rights therein and

3856 to protect in full the creditors rights under said arrangement.

VIII.

That the plan proposed will not maintain the continuity of the policy holders' policies. While it is fair that the business of respondent company should be protected and maintained as a going concern, such status is not of the first or paramount importance; the creditors and policy holders should be protected in full before the 3857 rights of others are considered.

IX.

That the non-cancellable policies now in existence and issued by said respondent company should and must be preserved, and that the plan proposed seeks to cancel or at least partially destroy said non-cancellable policy rights; that the company which proposes to take over the assets of said company is untried, has no material assets, has no substantial capital and no reserve 3858 sufficient to protect the rights of these objectors and other policy holders; that the facts set forth under the petition herein referred to show that said plan is not workable and does not provide a plan which will and can protect the interest of the policy holders. That if upon a hearing it is determined that said respondent is insolvent and cannot be further carried on as a going concern, that your objectors are informed and believe, and upon such information and belief allege, that there are better and more equitable bids for the

3859 ~~assets of~~ said company than that made under the proposed plan, and that said outstanding policies can be reinsured without losses to objectors of any of their rights thereunder. That the proposed plan shows upon its face that it will give to certain parties inequitable advantages over others.

Wherefore, your objectors pray that said petition be declined; that the matter be held in abeyance either in the hands of the present commissioner, or in the hands of one to be selected by 3860 the court; that a general scheme of financial responsibility be set up preliminary to any bidder preparing to take over respondent company; that the assets of the company be marshalled and that the same be sold to the highest and best bidder to the end that the policy holders and the creditors, together with all interested parties, may have their rights protected in full, and for whatever other relief the court may deem advisable.

3861

NEIL S. MCCARTHY,

By LEROY ANDERSON,

Attorney for Objectors.

Endorsed: Received copy of the within objections this 16th day of October, 1936. U. S. Webb, attorney general, by John L. Flynn, attorney for petitioner.

Filed Oct. 19, 1936, at 9:30 a. m. L. E. Lampton, county clerk; by A. G. Stanham, deputy.
D. 11.

3862 [TITLE OF COURT AND CAUSE.]

**Amended Complaint in Intervention &
Response to Order to Show Cause.**

Now come Robert J. Webb and Philip M. Klutznick, by Jacob J. Lieberman and Aaron B. Rosenthal, their attorneys, for themselves and on behalf of all persons, and, in particular, policyholders of respondent herein, The Pacific Mutual Life Insurance Company of California, a corporation, similarly situated; file this, their amended complaint in intervention herein, by leave of this court, and for intervention and for a first cause therefor, and for a first cause of action, allege as follows:

I.

That, as appears more fully herein, the issues arising hereby raise questions of and are matters of great public interest.

II.

3864

That, except as otherwise set forth herein, at all times mentioned herein:

(a) The Pacific Mutual Life Insurance Company of California was and is a corporation incorporated under the laws of the state of California and has had and still has its principal office and place of business in the city of Los Angeles, county of Los Angeles, state of California; and that, for brevity, said corporation is hereinafter referred to as respondent or as Old Company.

3865 (b) That at all times mentioned herein Samuel L. Carpenter, Jr., was and now is purporting and pretending to act as Insurance Commissioner of the State of California pursuant to the provisions of the Insurance Code of the state of California; and that, for brevity, said person is hereinafter referred to as petitioner.

III.

3866 That at all times mentioned herein said Old Company was authorized to issue, and did issue, a type of policy of insurance known as non-cancellable health and accident policy; that said type of policy has been issued to thousands of persons and that thousands of said policies are still outstanding in the hands of the lawful holders and owners thereof, who have paid all of the premiums required thereunder and otherwise have duly kept and performed all of the provisions and obligations of said policies on their part to be kept and performed; and that hereinafter for brevity such policy or type of policy is referred to as policy or policies, depending upon the context.

IV.

3867 That said intervening plaintiff Philip M. Klutznick, at all times mentioned herein, was and still is the holder and owner of such a policy, same bearing No. 5614191; and that at all times mentioned herein the said intervening plaintiff Robert J. Webb was and still is the holder and

3868 owner of such a policy, same bearing No. 5607473; and that each of said intervening plaintiffs has paid all of the premiums required under the terms and provisions of said policy, and otherwise has duly kept and performed all of the provisions and obligations thereof on his part to be kept and performed.

V.

3869 That heretofore, to-wit, on or about the 22nd day of July, 1936, the above-entitled action or proceeding was commenced in the above-entitled court by said Samuel L. Carpenter, Jr., purporting and pretending to act as Insurance Commissioner of the State of California, as petitioner, against The Pacific Mutual Life Insurance Company of California, a corporation, as respondent, with the knowledge and consent of said respondent, for the purpose of having petitioner authorized, pursuant to certain provisions of the Insurance Code of the state of California, to be appointed conservator of respondent, to work out a rehabilitation and/or reinsurance plan or agreement concerning said respondent, and, if that should prove to be impracticable, then to wind up and liquidate said respondent.

3870

VI.

That thereafter and prior to the filing of this complaint in intervention this court, with the knowledge and consent of said respondent, made certain orders and entered certain judgments and

3871 decrees herein, to-wit: an order, judgment and decree made and entered herein on the 22nd day of July, 1936, appointing said petitioner as conservator of said Old Company, and that certain order, judgment and decree made and entered herein on the 11th day of August, 1936, ratifying, approving and confirming said order and appointment, and re-appointing said petitioner as such conservator, and that certain order, judgment and decree made and entered herein on the 3872 17th day of August, 1936, ratifying, confirming and approving a certain order permitting the performance of acts and the making of payments alleged to be necessary to conserve and protect assets of said Old Company and to prevent the waste thereof; all of which appear more fully in the pleadings, records, files, minutes, orders, judgments, decrees and proceedings herein (which said pleadings, records, files, minutes, orders, judgments, decrees and proceedings are 3873 hereby incorporated herein in their entirety by reference thereto the same as though set forth herein *in haec verba*).

VII.

That each of the intervening plaintiffs herein, including in and by such designation all persons similarly situated to said plaintiffs, is a holder of such a policy, as same is more particularly described in paragraph III hereof.

3874

VIII.

That pursuant to the alleged and purported authority of the orders, judgments and decrees mentioned and described in paragraph VI hereof, said petitioner has proposed a so-called rehabilitation and reinsurance agreement (hereinafter referred to as agreement), purporting to be an agreement made and entered into as of the 22nd day of July, 1936, between Pacific Mutual Life therein called New Company,

3875 Insurance Company, a California corporation, and Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, as conservator of The Pacific Mutual Life Insurance Company of California, a California corporation, a copy of which agreement has heretofore been filed and made a part of the records, files, minutes, pleadings and proceedings hereof, and the terms and provisions of which are hereby incorporated by reference

3876 porated herein in full as though set forth in *haec verba*; that in connection with the making and filing of said agreement, said petitioner has petitioned this court for the approval of same, and this court has made and entered its order to show cause, requiring all persons interested, or claiming to be interested, herein, either as policyholders or stockholders of respondent herein, to be and appear before this court, at the hour of 10 o'clock A. M., on October 19, 1936, in the court room of Department 11, on the 12th floor

3877 of the City Hall, in the city of Los Angeles, state of California, and show cause, as is more particularly set forth in said order to show cause; that if the said agreement is authorized and approved by this court and same is consummated and the assets of said Old Company are sold pursuant thereto, to the corporation described in said agreement as the New Company, the said Old Company will be left without assets and means of paying any of said policies as same mature, 3878 according to the terms and provisions thereof, and from continuing same in full force and effect, or at all, and that said New Company will re-insure said policies only upon condition that the holders thereof, intervening plaintiffs among them, submit to a drastic, unwarranted and illegal reduction in the benefits payable thereunder, as same appears more fully from said agreement; and that, unless this court refuses to approve said agreement, said Old Company will be unable 3879 to keep said policies in full force and effect, or at all, according to the terms and provisions thereof.

IX.

Intervening plaintiffs allege, on information and belief, that a large number of holders of said policies are, by reason of age and physical disability or handicap, unable now or hereafter to obtain from other insurance companies a type of insurance similar to that offered in and afforded

3880 by said policies, and that still other holders of said policies, in large numbers, are unable to pay for a type of insurance similar to that offered in and afforded by said policies, owing to the fact that other insurance companies issuing similar policies exact a much higher premium therefor than does said Old Company for said policy.

X.

3881 That, by reason of the premises above set forth, intervening plaintiffs and all others similarly situated have no speedy and adequate remedy at law; and that, unless said Old Company is restored to a position where it can continue said policies, as set forth in paragraph VIII hereof, intervening plaintiffs and all others similarly situated will suffer irreparable damage and harm.

XI.

3882 That the approval of said agreement is beyond the authority and jurisdiction of this court and, if given, would be void and of no force and effect, for the reason that authority therefor is not given in, and, in fact, is forbidden by, the terms and provisions of said Insurance Code of California, and, in particular, of articles 13 and 14 of chapter 1 of part 2 of division 1 thereof.

XII.

That the acts of petitioner and of said Old Company, as herein set forth, and the negotiation of said agreement by the parties thereto, were done for the sole purpose of effecting a means or

3883 method by which said policies could and would be cancelled, and intervening plaintiffs and others similarly situated would be deprived of the benefits thereof.

XIII.

3884 That said policies have been issued to and are held by thousands of persons living throughout the world, and that their rights therein, and the degree and extent to which said persons are affected by the facts and circumstances set forth herein, raise questions and are matters of great public interest.

For a further and second cause for intervention and second cause of action, intervening plaintiffs repeat and incorporate herein by reference, with the same force and effect as though set forth *in haec verba*, the whole of their first cause for intervention and first cause of action, and further allege:

3885

I.

That if the Insurance Code of the state of California and, in particular, division 3, and articles 13 and 14 of chapter 1 of part 2 of division 1 thereof, authorize, or shall be construed or deemed to authorize, the acts, orders, judgments and decrees of this court and/or the acts of said petitioner and/or the acts of said Old Company and/or the approval and ratification of said agreement by this court, then said Insurance Code, and, in particular, the portions thereof

3886 specifically referred to, are illegal, null and void, and of no force and effect, in that each of them is in conflict with and is contrary to, and is forbidden by, the following provisions of the Constitution of the state of California, to-wit:

(a) Sections 7, 11, 13, 16, 21 and 22 of article I thereof;

(b) Section 1 of article III thereof;

(c) Sections 24 and 25 of article IV thereof;

3887 (d) Section 1 of article XII thereof.

For a further and third cause for intervention and third cause of action, intervening plaintiffs repeat and incorporate herein by reference, with the same force and effect as though set forth *in haec verba*, the whole of their first cause for intervention and first cause of action, and further allege:

I.

3888 That if the Insurance Code of the state of California and, in particular, division 3, and articles 13 and 14 of chapter 1 of part 2 of division 1 thereof, authorize, or shall be construed or deemed to authorize, the acts, orders, judgments and decrees of this court and/or the acts of said petitioner and/or the acts of said Old Company and/or the approval and ratification of said agreement by this court, then said Insurance Code, and, in particular, the portions thereof specifically referred to, are illegal, null and void, and

3889 of no force or effect, in that said Insurance Code and, in particular, the said portions thereof, are in conflict with and each of them is contrary to, and is forbidden by, section 1 of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, intervening plaintiffs demand judgment as follows:

3890 1. Denying the authority and approval of this court to the agreement more particularly described as proposed rehabilitation and reinsurance agreement, mentioned and described in paragraph VIII of the first cause of action hereof.

2. For such other and further order, judgment, decree and relief as shall be just, equitable or necessary in the premises.

JACOB J. LIEBERMAN and
AARON B. ROSENTHAL,

3891 By AARON B. ROSENTHAL,
Attorneys for Intervening Plaintiffs.

Verified.

Endorsed: Received copy of the within complaint this 19 day of Oct., 1936. U. S. Webb, attorney general, by John L. Flynn, attorney for

Filed Oct. 19, 1936. L. E. Lampton, county clerk; by R. J. Curtis, deputy.

3892 [TITLE OF COURT AND CAUSE.]

Return of: David Lynn Openshaw, Rulon Wall Openshaw, Nod I. Mulville, Gilbert Knudtson, Reuel Leslie Olson, and Delvy Thomas Walton to Order to Show Cause Re Rehabilitation and Reinsurance Agreement.

3893 Come now David Lynn Openshaw, Rulon Wall Openshaw, Nod I. Mulville, Gilbert Knudtson, Reuel Leslie Olson and Delvy Thomas Walton as objecting parties in the above entitled proceeding, and in answer to the petition on file herein, dated September 25, 1936, seeking approval of the rehabilitation and reinsurance agreement of the Insurance Commissioner as therein set forth, and by way of reply and return to the order to show cause issued out of this court on September 25, 1936, respectfully show:

I.

3894 That these objecting parties are now, and from the dates hereinafter specified have been, the owners and holders of non-cancellable income policies in the respondent company, The Pacific Mutual Life Insurance Company of California, as follows:

1. Said David Lynn Openshaw made application for and had issued to him by respondent company on August 21, 1929, policy No. 5602549, designated as a non-cancellable income policy in-

3895 suring against disability upon the life of said insured, being form No. A383, and renewable to age sixty (60), and for which he paid the annual premium at the time of issuance thereof of one hundred forty dollars (\$140.00), and has paid the said annual premium during each successive year thereafter, up to the present time, and said policy of insurance is now in full force and effect; that no claim has heretofore been made on the basis of such contract of insurance.

3896 2. Said Rulon Wall Openshaw made application for and had issued to him by respondent company on August 31, 1931, policy No. 5623536, designated as a non-cancellable income policy insuring against disability upon the life of said insured, being form No. A754, and renewable to age of sixty (60), and for which he paid the annual premium at the time of issuance thereof of eighty four dollars (\$84.00), and has paid the said annual premium during each successive

3897 year thereafter, up to the present time, and said policy of insurance is now in full force and effect; that no claim has heretofore been made on the basis of such contract of insurance.

3. Said Nod I. Mulville made application for and had issued to him by respondent company on March 11, 1931, policy No. 5605206, designated as a non-cancellable income policy insuring against disability upon the life of said insured, being form No. A383, and renewable to age of

3898 sixty (60), and for which he paid the annual premium at the time of issuance thereof of seventy three dollars (\$73.00), and has paid the said annual premium during each successive year thereafter, up to the present time, and said policy of insurance is now in full force and effect; that no claim has heretofore been made on the basis of such contract of insurance.

4. Said Gilbert Knudtson made application for and had issued to him by respondent company 3899 on January 15, 1920, policy No. 2668398, designated as a non-cancellable income policy insuring against disability upon the life of said insured, being form No. 232Z, and renewable to age sixty (60), and for which he paid the annual premium at the time of issuance thereof of fifty dollars (\$50.00), and has paid the said annual premium during each successive year thereafter, up to the present time, and said policy of insurance is now in full force and effect; that no claim has heretofore 3900 been made on the basis of such contract of insurance.

5. Said Reuel Leslie Olson made application for and had issued to him by respondent company on October 3, 1928, policy No. 5518154, designated as a non-cancellable income policy insuring against disability upon the life of said insured, being form No. A383, and renewable to age sixty (60), and for which he paid the annual premium at the time of issuance thereof of forty

3901 one dollars twenty-five cents (\$41.25), and has paid the said annual premium during each successive year thereafter, up to the present time; and said policy of insurance is now in full force and effect; that no claim has heretofore been made on the basis of such contract of insurance.

6. Said Reuel Leslie Olson further made application for and had issued to him by respondent company on February 13, 1928, policy No. 5524946, designated as a non-cancellable income
3902 policy insuring against disability upon the life of said insured, being form No. A383, and renewable to age sixty (60), and for which he paid the annual premium at the time of issuance thereof of fifty seven dollars seventy-five cents (\$57.75), to February 13, 1934, at which time said premium was reduced to twenty four dollars seventy-five cents (\$24.75), and paid at said reduced rate up to the present time, and said policy of insurance is now in full force and effect; that
3903 no claim has heretofore been made on the basis of such contract of insurance.

7. Said Delvy Thomas Walton made application for and had issued to him by respondent company on September 1, 1930, policy No. 5609874, designated as a non-cancellable income policy insuring against disability upon the life of said insured, being form No. A383, and renewable to age sixty (60); and for which he paid the annual premium at the time of issuance thereof.

3904 of eighty two dollars (\$82.00), and has paid the said annual premium during each successive year thereafter, up to the present time, and said policy of insurance is now in full force and effect; that no claim has heretofore been made on the basis of such contract of insurance.

8. Said Delvy Thomas Walton further made application for and had issued to him by respondent company on September 1, 1933, policy No. 5635474, designated as a non-cancellable income policy insuring against disability upon the life of said insured, being form No. A776, and renewable to age fifty five (55), and for which he paid the annual premium at the time of issuance thereof of fifty nine dollars (\$59.00), and has paid the said annual premium during each successive year thereafter, up to the present time, and said policy of insurance is now in full force and effect; that no claim has heretofore been made on the basis of such contract of insurance.

II.

That each of the objecting parties hereto are young men, and entered into the contract of insurance against disability with the respondent company, The Pacific Mutual Life Insurance Company of California, in good faith and in

3907 the prime of youth, seeking protection against
any such contingencies as might occur through
disability and for protection in their respective
professions as contemplated under the terms of
said policies above, and in strict reliance upon
the representations of the duly authorized repre-
sentatives and agents of said respondent com-
pany as to its honesty, fidelity, and standing in
the insurance field and among major insurance
3908 companies.

III.

That your petitioner herein, the Insurance
Commissioner in the formulation and prepara-
tion of the rehabilitation and reinsurance plan
and agreement concerning respondent corpora-
tion, should provide for the equal protection of
the rights of the objecting parties hereto under
3909 their respective non-cancellable income policies,
along with and equal to any other rights of con-
tract holders of insurance, made, issued, and
outstanding by the respondent corporation; that
the Insurance Commissioner is without author-
ity to prefer one class of policyholder over an-
other class, or to claim that certain reserves are
applicable to one type of policy, and that other,
lesser or no reserves are available for the pro-
tection of the class known as non-cancellable in-

3910 come policyholders; that to attempt any such classification would unfairly discriminate against the accrued and vested rights of these objecting parties and materially and adversely affect their said interests.

IV.

3911 That the court is without power to authorize the Insurance Commissioner and petitioner herein to prefer the holders of life insurance or other policies issued by respondent corporation over these holders of non-cancellable income policies in said respondent corporation, and that authority extended to said Insurance Commissioner should recognize the equal rights under the law of all policyholders as a single class or group, so far as the said contract rights or vested interests have accrued thereunder, and as
3912 pertain to the existing assets and reserves of said respondent corporation; that any attempt by which the rights and interests of these non-cancellable policyholders are attempted to be subordinated or subjected to prior rights of any other class of policyholder in and to its assets and reserves are without the power and authority of this court, or the Insurance Commissioner acting thereunder, and should receive judicial denunciation as an attempt to discriminate un-

3913 fairly against this particular class of policyholder.

V.

That the assets and reserves of respondent corporation should be held by petitioner as conservator, and should not be sold or transferred to any other person, firm, or corporation, unless and until such disposition thereof may be had on a fair and equitable basis, consistent with 3914 the value thereof; that the proceeds therefrom be held and applied in equal share and interest among all policyholders of whatsoever class, character, or nature, of respondent corporation, so as to afford these objecting parties the value of their interests in said assets and fair and equitable protection under the contracts hereinabove set forth and presently existing between them and respondent corporation, and for which 3915 premiums have been exacted by the latter from year to year.

VI.

That any plan or agreement of respondent corporation should not be approved by this court unless it offers a reasonable prospect for successful rehabilitation of the debtor corporation, and provides for distribution of available assets according to the respective claims represented by

3916 policies of insurance now in force of all parties, or which may be filed in the future, and further provides an alternative for cash reimbursement of premiums paid after allowing a reasonable sum for past protection under such non-cancellable policies on a fair actuarial basis.

VII.

3917 That these objecting parties be permitted to file in this proceeding, their claims for back premiums paid to the date hereof, and that the last premium payments made be held by petitioner, the Insurance Commissioner, intact, and such unused portion thereof returned to them upon determination of their rights and interests under policies herein set forth, and in and to the assets and reserves of the respondent corporation.

Wherefore, these objecting parties pray:

3918 (a) That this court consider the fairness and justness of any plan of rehabilitation submitted, and carefully scrutinize any proposed sale or transfer of the assets of respondent corporation;

(b) That the rights of these objecting parties as non-cancellable income policyholders be adjudged to be vested rights, and to be entitled to equal protection in the reserves of respondent

3919 corporation, along with all other policyholders thereof;

(c) For the protection of the rights and interests of said policyholders in and to the assets of said respondent corporation, and their application in equal share to the claims herein asserted, or which may in the future be filed, and

(d) For such other and further relief as to the court may seem just and equitable in the premises.

DAVID LYNN OPENSHAW,
RULON WALL OPENSHAW,
NOD F. MULVILLE,
GILBERT KNUDTSON,
REUEL LESLIE OLSON,
DELVY THOMAS WALTON,

By: DELVY T. WALTON,
Attorney for Objecting Parties.

3921

Verified.

Endorsed: Received copy of the within this 17 day of October, 1936. John L. Flynn, attorney for Attorney General; Mitchell, Silberberg & Knupp, by Peery Price, atty. for plff.

Filed Oct. 19, 1936. L. E. Lampton, county clerk; R. J. Curtis, deputy.

3922 [TITLE OF COURT AND CAUSE.]

Response of R. Rabinowitz to Order to Show Cause With Respect to Rehabilitation and Reinsurance, and Objections to Confirmation of Rehabilitation and Reinsurance Agreement.

Comes now R. Rabinowitz, and by way of response to that order to show cause with respect to rehabilitation and reinsurance, dated September 25, 1936, does object to the ratification, confirmation or approval of said rehabilitation and reinsurance agreement described in said order to show cause. As grounds therefor your objector avers:

I.

That this objector is and at all times herein mentioned has been the holder and owner of the following policies of health, accident and disability insurance heretofore issued by respondent herein, to-wit:

1. Policy No. 4641785 (Noncancellable Disability Policy) issued September 14, 1923.
2. Policy No. 4643430 (Noncancellable Disability Policy) issued November 19, 1923.
3. Policy No. 4670940 (Noncancellable Disability Policy) issued July 8, 1926.
4. Policy No. 384061 (Life Insurance with disability provisions) issued March 26, 1928.

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II.

That on July 22, 1936, each of the said policies of insurance hereinabove described was in good standing.

III.

That prior to July 22, 1936, this objector did become ill and disabled, at all times since has been and is now ill and disabled.

IV.

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That paragraph (13) of said rehabilitation and reinsurance agreement referred to in said order to show cause provides:

(13) The New Company shall be obligated to pay all disability benefits under Non-Can Policies for disabilities commencing prior to the effective date of this agreement with respect to which claims or notices of claims were duly filed in accordance with the terms of such policies, and in any event not later than twenty (20) days after the effective date of this agreement, and all payments under settlement agreements made by the Old Company with claimants under such policies, without any deduction or limitation whatsoever, but subject to all of the terms and provisions of such Non-Can Policies, and subject to the terms of any such settlement agreements; and subject, further, to any and all defenses, offsets, counterclaims, cross-complaints, and rescission rights against any such claim or claims, which would have been available to the

3928 Old Company or to the Conservator as afore-
said had this agreement not been made.

V.

That by use of the language "in accordance with the terms of such policies" in said paragraph (13), which language appears in line 21, on page 17 of said rehabilitation and reinsurance agreement, said agreement may:

3929 (a) Exclude any obligation to pay benefits unless claims or notices of claims were filed strictly in accordance with the policy terms; and hence

(b) Exclude any obligation to pay benefits where there exists a waiver of notice or claim or waiver of technical defenses, or there exist equitable grounds excusing strict compliance with the policy terms; and

3930 (c) Preclude the waiver of technical defenses and compel the New Company in all cases to assert technical defenses irrespective of the merits of the claim; and

(d) Deprive claimants of the right to assert estoppel against technical defenses where improper action on the part of the Company otherwise would entitle the assertion of estoppel; and

(e) Deprive the New Company of all liberty of action to waive technical defects in otherwise valid claims, or to recognize bona fide claims on their merits, irrespective of technical defects.

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VI.

That such results are harsh, unjust, unfair, discriminatory and inequitable. That the New Company should have full liberty of action to recognize bona fide claims on their merits irrespective of technical defects.

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That the litigation and uncertainty which has involved the Old Company and the New Company since July 22, 1936, have discouraged and prevented the filing of notices and claims with due compliance with policy terms.

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That the insistence and requirement by the officers and agents of the two companies and by the Commissioner after July 22, 1936, and for a period of more than twenty (20) days thereafter, that claimants irrevocably elect in writing to accept the earlier rehabilitation agreement (which has never been approved by the court) in order that their claims or notices might be received, has discouraged and prevented the filing of notices or claims with due compliance with policy terms. That claimants should be excused from default and delay, and from technical defects in filing notices in such cases, otherwise the benefit of paragraph (13) is rendered illusory.

3934 That said paragraph (13) in its present form renders illusory the benefits intended thereby in all cases where claims or notices of claims were not actually filed before July 22, 1936, even though disability occurred prior thereto. That this results from the fact that the earlier rehabilitation agreement (which has never been approved by the court) in paragraph (10) thereof excluded all claims for disability occurring prior

3935 to July 22, 1936, unless claims or notices of claims had been filed prior to July 22, 1936. That policy holders were misled thereby and caused to believe that subsequent filing of claims or notices of claims would be futile and were thereby induced not to file in accordance with the terms of the policies and not to file after July 22, 1936. That claimants should not be prevented from raising an estoppel against the Com-

3936 pany in such cases.

VII.

That the requirement of said paragraph (13) for due filing in accordance with the terms of the policies is unnecessary to the protection of the New Company. Said New Company is amply protected by the subsequent language of said paragraph providing that the obligation of the

3937 New Company is "subject to all of the terms and provisions of such Non-Can Policies", and also "subject, further, to any and all defenses, offsets, counterclaims, cross-complaints and rescission rights against any such claim or claims which would have been available to the Old Company or to the Conservator".

VIII.

3938 That paragraph (13) of said rehabilitation and reinsurance agreement referred to in said order to show cause should be modified by striking from lines 20 and 21 on page 17 the words "were duly filed in accordance with the terms of such policies, and in any event", and by inserting in lieu thereof the words "are filed" so that said paragraph will then read as follows:

3939 (13) The New Company shall be obligated to pay all disability benefits under Non-Can Policies for disabilities commencing prior to the effective date of this agreement with respect to which claims or notices of claims are filed not later than twenty (20) days after the effective date of this agreement, and all payments under settlement agreements made by the Old Company with claimants under such policies, without any deduction or limitation whatsoever, but subject to all of the terms and provisions of such

3940 Non-Can Policies, and subject to the terms of any such settlement agreements; and subject, further, to any and all defenses, offsets, counter-claims, cross-complaints, and rescission rights against any such claim or claims, which would have been available to the Old Company or to the Conservator as aforesaid had this agreement not been made.

Wherefore your objector prays that this court
3941 make its order disapproving paragraph (13) of said rehabilitation and reinsurance agreement referred to in said order to show cause and requiring that said paragraph (13) be revised and modified as set forth in paragraph VIII supra of this response.

R. RABINOWITZ,

By LAWLER & FELIX,

His Attorneys.

3942

Verified.

Endorsed: Received copy of the within response this.....day of....., 19..... U. S. Webb, attorney general, Mitchell, Silberberg & Knupp, by John L. Flynn, attorneys for petitioner.

Filed Oct. 19, 1936. L. E. Lampton, county clerk; by R. J. Curtis, deputy.

3943 [TITLE OF COURT AND CAUSE.]

Objections to Plan.

Leave of intervention having first been granted William A. Sullivan, as Insurance Commissioner of the state of Washington, the above named intervenor respectfully alleges:

I.

3944 That he now is and for more than three years last past has been the duly elected, qualified and acting Insurance Commissioner for the state of Washington. That he is a member of the National Convention of Insurance Commissioners and is a former president of said convention.

II.

3945 That the above named respondent is and for many years has been engaged in the insurance business in the state of Washington. That it has numerous policyholders and a large amount of property within said state, all under the jurisdiction and supervision of your intervenor by virtue of his office.

III.

That for many months last past this intervenor, in association with the Insurance Commissioners of California and other states, has been

3946 active in supervising, investigating and examining the affairs of the above named respondent.

IV.

That this intervenor in association with Insurance Commissioners of other states has heretofore expressed approval of the plan of rehabilitation and reinsurance presented by the Hon. Samuel L. Carpenter, Jr., Insurance Commissioner of the state of California, and now
3947 under consideration by this court. At the time said plan was formulated it was recognized that some plan must immediately be worked out if the good will and values of the above named respondent were to be retained. That said plan, in the opinion of this intervenor, was the best plan that could be formulated at that time, and gave promise, in the absence of any better plan,
3948 to work out the problems of respondent in a way as to avoid the necessity of liquidation. However, it was recognized then by all concerned, and especially by this intervenor, that the interests of policyholders of respondent could best be protected by the introduction of new money into the capital structure of respondent. It was apparent that one class of policyholders, namely, those holding noncancellable accident and health policies, would be compelled to accept drastic re-

3949 ductions in beneficial payments, and the interest
of this intervenor was and still is to be assured
that such reductions should not be greater than
was absolutely necessary, and that full beneficial
payments under said noncancellable policies
should be restored at the earliest possible time.

A proposal has recently been filed in this pro-
ceeding which if given effect would provide
3950 sorely needed additional capital, and which would
increase the present beneficial payments to the
noncancellable policyholders as much as 150%
above the payments proposed in the plan now
under consideration, and which gives promise, in
the opinion of this intervenor, to restore full
beneficial payments to such policyholders with
more speed and certainty than the Commis-
3951 sioner's plan.

This intervenor considers it to be his duty to
insist upon every possible protection to policy-
holders, and to be certain that the reserves be-
hind their policies shall be restored as quickly as
possible. The plan now under consideration does
not provide for any additional capital, whereas
added capital is the thing that is needed.

3952 Wherefore, this intervenor respectfully objects to the plan now under consideration on the ground that it is now possible to present another plan which would:

- a. Furnish additional capital;
- b. Increase beneficial payments to noncancellable policyholders;
- 3953 c. Give promise of restoring the full rights to such policyholders sooner and more certainly than the proposed plan;
- d. Be more advantageous to policyholders of all classes.

IVAN MERRICK,

Attorney for Intervenor.

639 Rosslyn Hotel, L. A.

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Verified.

Endorsed: Received copy of within objections this 20th day of Oct., 1936. U. S. Webb, Atty. Gen.; by John L. Flynn.

Filed Oct. 20, 1936, 2:29 p. m. L. E. Lampton, county clerk; by E. T. Crozier, deputy.

3955 [TITLE OF COURT AND CAUSE.]

**Proposal to Reinsure the Business of The
Pacific Mutual Life Insurance Company
of California as Modified to Conform
With Proposed Amendments.**

3956 The plan hereinafter outlined contemplates the organization of two corporations under the laws of the state of California. Said companies will be appropriately named, each will be under separate and independent management, and will be referred to herein as the "Life Company" and the "Accident Company". The Transamerica group, of which the Occidental Life Insurance Company is a part, will pay to said corporations an aggregate of \$12,108,200.00. The Accident Company will receive a portion of the profits of the Life Company.

3957 The Pacific Mutual Life Insurance Company of California will be hereinafter designated as "Pacific Mutual". Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, as Conservator of the Pacific Mutual Life Insurance Company of California, will be hereinafter referred to as "Conservator". The Superior Court of the state of California in and for the county of Los Angeles will be hereinafter referred to as "the Court". Non-cancellable Income Policies will be hereinafter referred to as "Non-Can policies". The term "Commis-

3958 sioner" shall mean the present Insurance Commissioner of the state of California or his successor in office.

THE LIFE COMPANY

1. The Life Company shall have a capital of \$1,000,000, together with a surplus of \$2,000,000, said amounts aggregating \$3,000,000, to be paid into the company by the Trans-america group.

3959 2. The Life Company will reinsure and assume the liabilities of the Pacific Mutual under all policies and contracts of insurance, except Non-Can policies, issued or assumed by the Pacific Mutual and outstanding and in force on July 22, 1936, or issued by the Conservator, subject, however, to any and all offsets, rights and defenses then or thereafter existing against said policies or contracts of insurance which would have been available to the Pacific Mutual
3960 or the Conservator. Liabilities under Non-Can policies are expressly excluded from the obligations assumed by the Life Company.

3. (a) The Life Company will agree to reinsure and assume, upon the terms and conditions hereinafter set forth, all policies other than Non-Can policies, which have lapsed, upon the reinstatement thereof in accordance with the terms and conditions of each such policy.

3961 (b) The foregoing paragraph (a) is modified to the extent that any policy, other than a Non-Can policy, lapsed since July 22, 1936, will be reinstated during the lifetime of the insured, provided the insured is not in such condition as to be eligible for benefits under his policy, without evidence of insurability, on written application therefor by the insured and payment of all premiums in arrears, if such application is made
3962 and premiums are paid within seventy-five (75) days after the approval by the Court of the reinsurance agreement contemplated by this proposal.

(c) Upon reinstatement of a lapsed policy it shall for all purposes be treated (but only from and after the date of reinstatement) the same as if it had been in force on the effective date of the reinsurance agreement contemplated herein, and shall be subject to the terms and conditions of said agreement.
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4. The Life Company will pay in full all valid unpaid claims under policies issued or assumed by the Pacific Mutual, other than Non-Can policies, and all claims arising under the policies reinsured by it, and all liabilities which are incident to such policies, subject, however, to any and all defenses, offsets or counterclaims which would have been available to the Pacific Mutual or to the Conservator.

3964 5. (a) The Conservator shall sell, assign, convey and transfer, or cause to be sold, assigned, conveyed and transferred to the Life Company, vesting title thereto in the Life Company free and clear of encumbrances, tax or other liens or adverse claims, Pacific Mutual assets equal in value to the aggregate sum of the legal reserves required for the policies and contracts reinsured by the Life Company and such other liabilities assumed by the Life Company in its reinsurance agreement.

3965 (b) All of the Pacific Mutual assets to be acquired by the Life Company, as hereinabove set forth, shall be taken at the aggregate values as shown in the financial statement of the Pacific Mutual Life Insurance Company as of July 22, 1936 (subject to appropriate adjustments for assets acquired or disposed of in the course of business transactions occurring since said date to the date of execution of the contract of re-

3966 insurance) provided the court shall find and decree that said values represent the fair value of said assets.

(c) The amount of the reserves required for the business reinsured and the aggregate value of the assets to be acquired by the Life Company shall be fixed and determined as of the effective date of the contemplated reinsurance agreement, and the assets shall be taken at the value determined according to the provisions of 5.(b) above.

3967 (d) On the assumption that the amount of the required reserves and the value of assets will be approximately the same on the effective date of the proposed reinsurance agreement as the asset values and reserves set forth in said financial statement as of July 22, 1936, the exhibits introduced in the pending proceedings and marked Exhibits G-1, G-3 and G-4, will reflect the approximate amount of assets to be acquired, the approximate amount of required reserves, 3968 the approximate amount of liabilities to be assumed, and the capital structure of the Life Company.

6. The Life Company will engage in a general life, accident and health insurance business and will segregate its business by establishing three departments, namely:

- (1) Participating Life Insurance Department;
- 3969 (2) Non-Participating Life Insurance Department; and
- (3) General Accident and Health Insurance Department.

To each department will be allocated a portion of the Pacific Mutual assets acquired by the Life Company equal in value to the amount of reserves and liabilities of such department. The selection of assets allocated to each department shall be made by the Conservator and approved by the Transamerica group.

3970 7. The Life Company will assume no claims or liabilities of any kind or nature against the Pacific Mutual or the Conservator other than those hereinabove set forth. The Life Company will pay to the Conservator such amount of money, if any, hereafter paid by the Conservator in satisfaction of claims filed by dissenting holders of policies reinsured under the terms of this proposal and allowed by the Court. There shall be no moratorium on policy loans or surrenders for cash value.

3971 8. Representation on the Board of Directors of the Life Company will be offered to interested groups of policyholders and agents; and in the conduct of its business the Life Company will retain all satisfactory employees of the Pacific Mutual.

3972 9. The Life Company will enter into equitable agency agreements with such agents of the Pacific Mutual as desire to become associated with the Life Company, and so long as any such agent remains in the service of the Life Company, renewal commissions will be paid such agent on policies written by him for the Pacific Mutual and reinsured by the Life Company, in accordance with the terms and provisions of his Pacific Mutual agency contract covering such business. In computing commissions under Pacific Mutual agency contracts policies reinsured by the Life Company shall be considered a con-

3973 tinuation of existing policies and not the writing of new business.

10. The Life Company will pay to the Accident Company fifty per cent (50%) of the net profits of the business of its Accident Department, payments to be made in annual installments, subject to the terms and conditions and termination of such payments, as hereinafter set forth.

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THE ACCIDENT COMPANY

11. The capital stock of the Accident Company will consist of 254,100 shares of Class A common stock and 254,100 shares of Class B common stock. All of said stock shall be of the par value of \$1.00 per share and shall have the same voting and dividend rights. The Transamerica group will pay \$508,200 for said stock, totaling 508,200 shares. Class A common stock shall be callable at any time within ten (10) years at \$30 per share. In the event of liquidation of the Accident Company after restoration and restitution of full benefits and agents' commissions, Class A stock shall participate in the distribution of assets to the extent of \$10 per share, after which the Class B stock shall participate in such distribution of assets to the extent of \$10 per share, and thereafter both classes of stock shall participate equally in any distribution of assets.

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3976 The Class A stock of the Accident Company shall either be delivered immediately to the stockholders of Pacific Mutual, or upon the order of the Court, be impounded with the Insurance Commissioner until there shall have been full and complete restoration of benefits under Non-Can policies, full restitution in deficiencies in benefit payments to Non-Can policyholders, and full restoration and restitution to agents on account of commissions relating to Non-Can policies, or upon such other terms and conditions as may be set forth in said order of the Court.

12. In addition to the payment of \$508,200 as set forth in the preceding paragraph, the Transamerica group will pay to the Accident Company \$1,100,000 and will make further payments to the Accident Company of a sum of \$7,500,000, payable in installments at the rate of \$500,000 per year.

3978 For the purpose of providing additional initial surplus of the Accident Company, the Transamerica group will immediately collateralize the first annual payment in the sum of \$500,000 so as to qualify the sum so collateralized as a present admissible asset of the Accident Company to bear interest at the rate of $4\frac{1}{4}\%$, and agrees to likewise collateralize and qualify the second annual payment of \$500,000, if necessary, to cover and pay any expenses or losses of the Accident Company which cannot be defrayed out of the Accident Company's available surplus.

3979 The Transamerica group reserves the right to make payment at any time prior to the expiration of said fifteen year period of all or any part of the unpaid amount of said sum of \$7,500,000.

13. (a) The Accident Company will assume and reinsure liabilities of the Pacific Mutual and the Conservator under all Non-Can Accident and Health policies issued by the Pacific Mutual and in force on the effective date of the agreement contemplated by this proposal, subject to the policy terms and conditions and also to the terms, conditions and limitations, and only to the extent, hereinafter specifically provided, and subject also to any and all claims, defenses, actions and rights in connection therewith, which would have been available to the Pacific Mutual or the Conservator.

3981 (b) The Accident Company will pay, without deduction, every valid claim for disability benefits under any such policy for disability arising prior to July 22, 1936, with respect to which claim or notice of claim was duly filed in accordance with the terms of the policy on or before August 12, 1936, and will likewise pay all liabilities, without deduction, under settlement agreements made by the Pacific Mutual with claimants under any such policy. All such claims are subject, however, to all defenses and rights which would have been available to the Pacific Mutual or to the Conservator.

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(c) As to all other claims for disability benefits under Non-Can policies, now pending or hereafter arising, the Accident Company's liability in any such case shall be limited to the percentages of the monthly disability benefits set forth in the following schedule:

	Prem. Class	Issued Under Rate Books	Policy Forms	Issued Under Policy No.	Percentage of Original Monthly Benefit Assumed New Company
3983					
	1918	A1445-A1445Z A1445Y-A1445X A1445W	A231 to A288, inc.	2658601 to 2698150 4600501 to 4628000 4711101 to 4712600 4730901 to 4731100	50%
	1921	A1687-A1687Z A1687Y-A1687X A1687W	A291 to A294, inc. A365-A366	4628001 to 4700000	59%
	1926	A1958-A1958Z	A382-A383 A386-A387 A387Z	5500001 to 5600000	65%
3984					
	1929	A2293	A382-A383 A386-A387 A387Z	5600001 to 5620000	72%
	1931	A2367	A753 to A756, inc. A763-A764	5620001 to 5635000	78%
	1932	A2432-A2432Z A2499 A2499	A775 to A780, inc. Aggregate A1216 to A1221, inc.	5635001 to 6000000 6500001 to 7000000	93% 93%
	1935	A2567	Aggregate A1226 to A1229, inc.	7000001 to 7100000	93%

3985 Benefits under all such policies shall be reduced to the extent indicated in the foregoing schedule but shall be subject to restoration of monthly benefits and restitution of deficiencies in installments previously paid as hereinafter provided.

(d) Notwithstanding the reduction in benefits and the limitation of the obligation of the Accident Company to make monthly disability payments, as set forth in the preceding paragraph, each holder of any such policy, to be entitled to the benefit of the proposed reinsurance agreement, shall be obligated to continue payment of premiums in the amount stipulated in his policy.

3986 14. (a) At the end of five (5) years from the effective date of the contemplated reinsurance agreement, or at such earlier date as may be fixed by the Commissioner, the reserve requirements shall be recomputed and if reserves and funds available for reserves are then sufficient to justify an increase in the schedule of benefits set forth in paragraph 13 (c) hereof, benefit payments on claims then in force at reduced rates and benefits on future claims will be increased to a rate approved by the Commissioner. Thereafter redetermination of reserve requirements and available reserves for the purpose of adjusting benefit rates shall be made from time to time upon request of the Accident Company or the Commissioner, to the end that

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3988 full benefit payments under said policies may ultimately be restored.

Agents' commissions on Non-Can policies are to be paid as provided for in paragraph 19 hereof.

(b) Surplus of the Accident Company (not including funds received from the Life Company representing a share of the net profits of its Accident and Health Department) not required for the successful conduct and operation of its
3989 business, shall be used for the purpose of restoring benefits under all policies not in benefit and increasing future payments under policies in benefit. Such available funds shall from time to time be added to the reserves for such policies until such time as adequate reserves have been established for the full restoration of such policies, at which time the Accident Company will fully assume and reinsure all such policies not in benefit, and at said time said policies not in
3990 benefit shall be deemed to be fully restored. As the rate of benefits is increased or restored, the rate of agents' commissions shall be correspondingly increased.

(c) Funds received from the Life Company, representing one-half of the net profits of its Accident and Health Department shall be used exclusively for the purpose of making up deficiency in payments of disability benefits to claimants who have been paid less than they

3991 were entitled to receive under their policies as originally written, and in making up deficiencies in payments to agents who have been paid less than they were entitled to receive as commissions relating to Non-Can policies.

After policies not in benefit shall have been fully reinsured, all surplus funds of the Accident Company not required for the successful conduct and operation of its business, shall be used for the purpose of making up deficiency in **3992** payments of disability benefits to claimants who have been paid less than they were entitled to receive under their policies as originally written, and of deficiency in payments of commissions to agents.

(d) The Accident Company shall not be required to pay or restore full benefits under policies as originally written, except in the manner and to the extent hereinabove set forth.

3993 (e) Upon full restoration of benefits, payments of deficiencies in benefit installments previously paid and restoration and restitution of commissions to agents, the Life Company will be released from its obligation to pay^o to the Accident Company a portion of the net profits of the Accident and Health Department.

(f) No dividends shall be paid to stockholders of the Accident Company until after full

3994 restoration of benefits, payment of deficiencies in benefit installments previously paid and restoration and restitution of commissions to agents (in each case without interest on deficiencies), and until a surplus of \$2,500,000 shall have been accumulated.

(g) The basis to be used in determining the adequacy of reserves shall be the New York Standard Table, with the variable factor limited **3995** to the actual experience of the Pacific Mutual and/or the Accident Company with Non-Can Accident and Health insurance, or such other table or basis as shall be required by the laws of the State of California.

3996 15. All of the Pacific Mutual assets not transferred and delivered to the Life Company, and the proceeds of any claim, right or cause of action collected by the Conservator, shall be transferred, assigned and conveyed to the Accident Company. The assets to be transferred to the Accident Company shall be in accordance with the allocation to the Accident and Health Department of Pacific Mutual, as shown in said financial statement of July 22, 1936 (subject to appropriate adjustments for assets acquired or disposed of in the course of business trans-

3997 actions occurring since said date to date of execution of the contract of reinsurance). The selection of additional assets to be transferred to the Accident Company pursuant to this plan, shall be made by the Commissioner and approved by Transamerica group.

16. On the assumption that the value of the assets and the required reserves will be approximately the same on the effective date of the proposed reinsurance agreement as the asset values and reserves set forth in said financial statement of July 22, 1936, the exhibits introduced in the pending proceedings and marked Exhibits G-2, G-3 and G-4, indicate the approximate amount of assets to be taken over by the Accident Company, the approximate amount of required reserves, the approximate amount of liabilities to be assumed and reinsured by the Accident Company, and the capital structure of the Accident Company. The proposal to pay benefits, on claims arising subsequent to July 22, 1936, according to the schedule of reduced benefits hereinabove set forth, is based upon the figures and statistics contained in said financial statement of July 22, 1936, and shall be subject to examination, verification, adjustment and extension of the data contained in said financial

4000 statement, to the effective date of the agreement contemplated by this proposal.

17. Representation on the Board of Directors of the Accident Company will be offered to interested groups of policyholders and agents; and in the conduct of its business the Accident Company will retain all satisfactory employees of the Pacific Mutual.

4001 18. The Accident Company shall have the right to engage in a general accident and health insurance business.

4002 19. The Accident Company will enter into equitable agreements with such agents of the Pacific Mutual as desire to become associated with the Accident Company, and so long as any such agent remains in the service of the Accident Company, renewal commissions will be paid such agent on policies written by him for the Pacific Mutual and reinsured by the Accident Company, in accordance with the terms and provisions of his Pacific Mutual agency contract covering such business, as herein modified. This proposal contemplates the temporary payment of disability benefits under the Non-Can policies on a reduced basis. It is believed that agents are interested in the restoration of full

4003 benefit payments under Non-Can policies at the earliest practicable date, and, to that end, are willing to cooperate with proponent by deferring payment of a part of their commissions which would otherwise be payable to them. It is proposed that commissions payable to agents on Non-Can policies shall be adjusted by a reduction thereof corresponding to the percentage of reduction of benefit payments in effect for each 4004 class of policies as shown in the schedule hereinabove set forth. As the rate of benefit payments under policies is increased, commissions to agents will at the same time be correspondingly increased.

20. The Accident Company will agree to pay the Conservator a sum equal to all legal and valid claims filed with the Conservator and allowed by the Court, except valid claims of any 4005 character which may be allowed by the Court and paid by the Conservator prior to the transfer and delivery of Pacific Mutual assets to the Accident Company. In the event that claims of any kind not specifically assumed by the Life Company and not arising out of the business transacted by said company on its own account, shall be asserted against the Life Company and the Life Company shall be required by the final

4006 judgment of any court of competent jurisdiction to pay or discharge such claims, or in case the Life Company is made a party defendant in any suit or suits arising out of the pending proceedings, the Accident Company shall reimburse the Life Company for all amounts so determined and paid and also its reasonable costs and expenses incurred in connection with any such litigation.

The foregoing sets forth the essential features
4007 of the plan of the Transamerica group for the reinsurance of the business of Pacific Mutual, as modified and amended. If this proposal is accepted, appropriate agreements will be prepared and executed which will clearly and definitely express the intentions and the obligations of the parties thereto. In addition to the matters outlined in this proposal, such agreements will contain such other provisions as may be
4008 mutually agreed upon by the Conservator and the Transamerica group, including such provisions as are usually contained in reinsurance agreements.

In a letter addressed to the California Insurance Commissioner, dated October 18, 1936, Transamerica group further states:

"If, however, it is your opinion and the view of the Court that restoration of benefits and

4009 restitution in respect of deficiencies can be made in a manner which is deemed to be more equitable than as proposed by us, we will agree that all of said funds of the Accident Company from whatever source shall be applied for the benefit of Non-Can policyholders on such basis as the Court may find proper, without payment, however, of interest on deficiencies."

4010 and the plan set forth in this proposal will be amended in this respect to conform with the Court's determination.

If, in the opinion of the Conservator and the Court, the proposal hereinabove outlined can be modified so as to facilitate and make more effective its purposes, the Transamerica group will give careful and sympathetic consideration to any suggestions for the improvement of its general plan, to the end that all interested persons, and particularly policyholders in all groups, may be accorded treatment that is as fair, just and equitable as it is possible to secure under all the circumstances.

4011

Dated at Los Angeles, California, November 21, 1936.

L. M. GIANNINI

4012

EXHIBIT G-1

**LIFE COMPANY
PRO-FORMA FINANCIAL STATEMENT**

• July 22, 1936

Assets:

Cash Paid in by Transamerica
Group 3,000,000.00

Life Departments (Exhibit 4) 190,206,813.27

Accident & Health Depart-
ment (Exhibit 4) 2,419,804.26

4013

Total Assets 195,626,617.53

Liabilities & Reserves:

Life Dept. Liabilities & Re-
serves (Exhibit 4) 190,206,813.27

Reserve for Supplementary
Contracts 198,000.00

Agents Commissions Accrued 117,284.67

Taxes Accrued 100,000.00

Reserve for Claim Investiga-
tion 30,000.00

4014

Reserve for Unpaid Losses—
A. & H. Dept. 614,987.00

Reserve for Unearned Prem-
ium—A. & H. Dept. 1,359,532.59

Total Liabilities & Reserves 192,626,617.53

Capital & Surplus:

Capital Stock 1,000,000.00

Surplus 2,000,000.00

Total Capital & Surplus 3,000,000.00

**Total Liabilities, Reserves,
Capital & Surplus** 195,626,617.53

4015

EXHIBIT G-2

ACCIDENT COMPANY
PRO-FORMA FINANCIAL STATEMENT
July 22, 1936.

Assets:

	Cash Paid in by Transamerica Group	1,608,200.00
	*Note Receivable—Transamerica Group	500,000.00
4016	*Deferred Receivable — Transamerica Group	7,000,000.00
	Other Assets (See Exhibit 4)	30,082,794.15
	Total Assets	39,190,994.15

Liabilities & Reserves:

	Unearned Int. & Rent Paid in Advance	587.23
4017	Salaries, Rents & Other Expense Accrued	34,000.00
	Agents Commissions Accrued	40,000.00
	Taxes Accrued	59,050.00
	Reserve for Conservatorship Exp., etc.	191,946.01
	Reserve for Return Premiums —Suspense	17,291.43
	Reserve for Claim Investigation & Exp.	820,020.00
	Reserve for Real Estate	308,224.45
	Reserve for Mortgage Loans	128,289.04

4018	Reserve for Security Fluctuation	105,648.00
	Reserve for Unpaid Losses & Claims	19,554,000.00
	Reserve for Unearned Premium (1,550,000) and for Active Policies—to maintain schedule of benefits set forth in paragraph 13(c) of proposal	9,600,000.00
	Total Liabilities & Reserves	30,859,056.16
4019.	Capital & Surplus:	
	Capital Stock—Class "A"—\$1 Par, 254,100 shares	254,100.00
	Capital Stock—Class "B"—\$1 Par, 254,100 shares	254,100.00
		508,200.00
	Surplus (of which \$7,000,000.00 is deferred)	7,823,737.99
	Total Liabilities, Reserves, Capital & Surplus	39,190,994.15
4020		

*These items represent the payments to be made by Transamerica Group at the rate of \$500,000 per year for fifteen years under the terms of its proposal. The first payment which is due one year after the date of the agreement contemplated by the proposal will be qualified as an immediate admissible asset by being reduced to a promissory note, due one year, properly secured by collateral, and bearing interest at the at the rate of 4½% per annum.

Transamerica Group will likewise qualify the second of such annual payments if necessary to cover any expenses or losses of the Company which cannot be defrayed out of the Company's surplus.

PACIFIC MUTUAL LIFE INSURANCE COMPANY

Financial Statement Showing Allocation of Assets & Liabilities to Life Company and Accident Company July 22, 1936, Constructed from July 22, 1936 Financial Statement of the Pacific Mutual Life Insurance Company.

	Total	To Life Company	To Accident Company
<hr/>			
Assets:			
Total Admitted Assets of Life Dept. (Ex. 5)	196,300,381.38	190,206,813.27	6,093,568.11
Total Admitted Assets of A. & H. Dept. (Ex. 5)	26,409,030.30	2,419,804.26	23,989,226.04
	<hr/>	<hr/>	<hr/>
Total Assets	222,709,411.68	192,626,617.53	30,082,794.15
	<hr/>	<hr/>	<hr/>

Liabilities & Reserves:

Total Liab. & Reserves of Life Dept. (Ex. 5)	190,206,813.27	190,206,813.27	—
Unearned Int. & Rent Paid in Advance	587.23		587.23
Salaries, Rent & Other Exp. Accrued	34,000.00		34,000.00
*Agents Commissions Accrued	157,284.67	117,284.67	40,000.00
*Taxes Accrued (A. & H. Dept.)	159,050.00	100,000.00	59,050.00
Reserve for Conservatorship Exp. etc.	191,946.01		191,946.01

4024	Reserve for Return Premium Suspense	17,291.43		17,291.43
	*Reserve for Claim Investiga- tion Exp.	850,020.00	30,000.00	820,020.00
	Reserve for Real Estate	308,224.45		308,224.45
	Reserve for Mortgage Loans	128,289.04		128,289.04
	Reserve for Security Fluctu- ation	105,648.00		105,648.00
4025	*Reserve for Supplementary Contracts (A. & H. Dept.)	198,000.00	198,000.00	—
	Reserve for Unpaid Losses & Claims (A. & H. Dept.)	20,168,987.00	614,987.00	19,554,000.00
	*Reserve for Unearned Prem- ium (A. & H. Dept.)	2,909,532.59	1,359,532.59	1,550,000.00
	Additional Reserve for Non- Can Policies	24,183,742.00		24,183,742.00
		<hr/>	<hr/>	<hr/>
	Total Liabilities & Re- serves	239,619,415.69	192,626,617.53	46,992,798.16
4026	Capital & Surplus (or Deficit)			
	Capital	508,200.00	254,100.00	254,100.00
	Surplus (Deficit)	(17,418,204.01)	(254,100.00)	(17,164,104.01)
		<hr/>	<hr/>	<hr/>
	Total Liabilities, Reserves & Capital	222,709,411.68	192,626,617.53	30,082,794.15
		<hr/>	<hr/>	<hr/>

*Allocation of these items between the two companies is arbitrary and subject to minor adjustment upon ascertainment of correct figures.

PACIFIC MUTUAL LIFE INSURANCE COMPANY
COMBINED FINANCIAL STATEMENT OF LIFE AND ACCIDENT
DEPARTMENTS CONSTRUCTED FROM STATEMENTS SUB-
MITTED BY INSURANCE COMMISSIONER JULY 22, 1936

	Life Dept.	Accident Dept.	Total
LEDGER ASSETS			
Book value of real estate	16,394,057.98	2,610,249.56	19,004,307.54
Mortgage loans on real estate	68,235,437.70	16,390,154.40	84,625,592.10
Loans secured by Bonds, Stocks etc.	3,739,188.07		3,739,188.07
Loans to Policyholders	32,623,109.42		32,623,109.42
Premium Notes on Pol. in force	2,280,871.80		2,280,871.80
Book value of bonds	55,002,791.48	4,095,072.65	59,097,864.13
Book value of stocks	4,743,794.82	2,127,034.05	6,870,828.87
Cash in company's office	408,873.00	152,730.18	561,603.18
Cash in Trust Co. & Bk. Dep.— no int.	4,913,750.28	189,103.65	5,102,853.93
Cash in Trust Co. & Bk. Dep.— on int.	3,200,000.00		3,200,000.00
Bills Receivable	15,156.06		15,156.06
Agents Balances	205,558.66	28,733.82	234,292.48
		3,483.15	3,483.15
Deposits in Suspended Banks & Susp. item	-244,402.10	-23,429.99	-267,832.09
Gross premiums, less return prem- iums and insurance in course of coll.		617,995.46	617,995.46
Accounts Receivable		30.00	30.00
Treasury Stock		273.00	273.00
Due for reinsurance on paid losses		2,691.22	2,691.22
Employees stock purchase plan		251,583.76	251,583.76
Total Ledger Assets	191,518,187.17	26,445,704.91	217,963,892.08

4030

NON-LEDGER ASSETS

Interest due & accrued on mtges.	636,571.40	159,419.49	795,990.89
Do Col. loans	11,821.65		11,821.65
Do Pol. loans	1,251,572.16		1,251,572.16
Do Bonds	484,495.17	49,328.72	533,823.89
Do Deposits	6,607.33		6,607.33
Rents Accrued	15,298.57	2,295.45	17,594.02
Market val. of stocks over book value	387,238.31	201,665.95	588,904.26
Net uncollected and def. premiums	3,376,937.56		3,376,937.56
4031 Allowed value col. loans not on ledger	9,100.69		9,100.69
Gross Assets	197,697,830.01	26,858,414.52	224,556,244.53

DEDUCT ASSETS NOT ADMITTED

4032

Payroll & Salary Suspense Acct.	21,926.23		21,926.23
Other Susp. & Cashier's abeyance & agents balances	247,265.36	28,733.82	275,999.18
Bills Receivable	15,156.06	30.00	15,186.06
Premiums Notes & Loans in excess of val.	5,000.00		5,000.00
Deposits in suspended banks	32,321.02	3,483.15	35,804.17
Book value of bonds over market	1,075,779.96	160,639.26	1,236,419.22
Treasury Stock (Company's stock owned)		273.00	273.00
Employees stock purchase plan		251,583.76	251,583.76
Certain premiums in course of coll.		4,641.23	4,641.23
Total Assets Not Admitted	1,397,448.63	449,384.22	1,846,832.85
Total Admitted Assets	196,300,381.38	26,409,030.30	222,709,411.68

PACIFIC MUTUAL LIFE INSURANCE CO.
COMBINED FINANCIAL STATEMENT
JULY 22, 1936

	Life Dept.	Accident Dept.	Total
LIABILITIES, SURPLUS & OTHER FUNDS			
Net Reserves after deducting \$208,966 for reinsured risks	160,746,515.00		160,746,515.00
Res. for T. & P. disability included in life pol.	10,648,781.00		10,648,781.00
Present Value of amounts not yet due on sup. contracts not involving life contingencies	6,041,375.00		6,041,375.00
Res. for unpd. losses & Claims (Life Dept.)	1,612,409.00		1,612,409.00
Due and unpaid on Sup. contracts	20,533.56		20,533.56
Div. left with co. to accumulate at int.	4,427,612.00		4,427,612.00
Gross premiums paid in advance	1,526,783.00		1,526,783.00
Unearned int & Rent paid in advance	662,199.90	587.23	662,787.13
Agents commissions due or accrued	18,650.69	157,284.67	175,935.36
Salaries, rents & expenses accrued	102,559.35	34,080.00	136,559.35
Medical examiners and legal fees accrued	36,331.41		36,331.41
Accrued taxes	736,823.00	159,050.00	895,873.00

4036	Dividends due policyholders	43,650.00		43,650.00
	Div. declared on or apportioned to pol. o	1,068,313.00		1,068,313.00
	Do to			
	def. div. pol.	18,452.85		18,452.85
	Further div. res. on def. div. pol.	59,631.00		59,631.00
	Renewal Bonus Fund	23,039.00		23,039.00
	Miscellaneous liabilities	15,786.93		15,786.93
	Reserve for Real Estate	494,083.17	308,224.45	802,307.62
	" " Mtge. loans	952,768.34	128,289.04	1,081,057.38
4037	" " Col. loans	567,516.07		567,516.07
	" " Security Fluctuation	383,000.00	105,648.00	488,648.00
	" " Unpaid losses & claims		20,168,987.00	20,168,987.00
	" " Investigation & Claim Exp.		850,020.00	850,020.00
	" " Unearned premiums		2,909,532.59	2,909,532.59
	" " Supplementary Contracts		198,000.00	198,000.00
	" " Return Premiums Suspense		17,291.43	17,291.43
	" " Non-Can policies		24,183,742.00	24,183,742.00
	Total	190,206,813.27	49,220,656.41	239,427,469.68
4038	CAPITAL	254,100.00	254,100.00	508,200.00
	Surplus or	5,839,468.11		
	(Deficit)		(-23,065,726.11)	(-17,226,258.00)
	Total Liabilities, Surplus & Other Funds	190,300,381.38	26,409,030.30	222,709,411.68

Endorsed: Filed Nov. 25, 1936. L. E. Lampton, county clerk;
by A. G. Stanham, deputy. D. 11

4039 [TITLE OF COURT AND CAUSE.]

**Plan of Wm. H. Neblett for Pacific Mutual
Life Insurance Company of California—
Its Liquidation and Sale.**

Comes now Wm. H. Neblett *in pro persona* and by his attorneys, R. Dean Warner, LeRoy B. Lorenz and E. Walter Guthrie, with consent obtained in open court and files this, his plan for
4040 liquidation and sale of Pacific Mutual Life Insurance Company of California.

It is obvious from the evidence so far taken before the court that further efforts of the conservator are futile and that an order of liquidation is inevitable. The motion of the Insurance Commissioner entitled "Petition for Approval of Rehabilitation and Reinsurance Agreement" of
4041 the company is but a proceeding in liquidation under another name. It is suggested that the court treat the Insurance Commissioner's petition as one for liquidation under the code, order a liquidation in accordance with article 14, amended by chapter 219, Statutes 1935, of the Insurance Code of California, and direct in the order of liquidation a sale of all of the assets of the Pacific Mutual Life Insurance Company of Cali-

4042 fornia within a limited time to the highest and best bidder.

The evidence so far introduced fully supports an order of liquidation and sale. Troublesome questions raised in the present hearing on the constitutionality of the Insurance Code would be entirely obviated, as it is practically certain that no successful assault may be made upon the constitutionality of that part of the code which sets
4043 up a plan of liquidation for a failing insurance corporation.¹

The court may treat at least one of the plans on file as a basic bid and confirm the title to the assets of the company in that bidder after due opportunity given to, and failure by any other responsible bidder to raise the bid on file at any time before confirmation.

4044 The Commissioner's plan cannot be treated as a bid because it provides only for the purchase of a part of the assets of the Pacific Mutual Life Insurance Company through a new and wholly owned subsidiary company financed solely from the assets of the old. It is not possible in law to sell the assets of a failed corporation to itself and pay for them with the property of the corporation being liquidated,

4045 Wherefore, intervenor, Wm. H. Neblett, prays that:

1. An order of liquidation be made;
2. The court submit all of the assets of Pacific Mutual Life Insurance Company for bids;
3. The court accept the highest and best bid of a responsible insurer, and that it confirm the sale to him.

WM. H. NEBLETT,
Intervener.

4046

WM. H. NEBLETT,

In Pro. Prosona;

R. DEAN WARNER,

LEROY B. LORENZ and

E. WALTER GUTHRIE,

By WM. H. NEBLETT,

Attorneys for Intervenor.

4047

1. The liquidation of this company cannot be had in the Federal courts. It cannot become a bankrupt. Bankruptcy Act, Section 4, 11 U. S. C. A. 22; nor may a receiver be appointed in the Federal courts as the Insurance Code provides a complete scheme of liquidation. Commonwealth of Pennsylvania v. Williams, 294 U. S. 176, 79 L. ed. 841; Bank v. Hawkins (C. C. A. 5), 42 Fed. (2d) 209.

Endorsed: Filed Nov. 30, 1936. L. E. Lampton, county clerk; by A. G. Stanham, deputy.
D. 11.

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4048 [TITLE OF COURT AND CAUSE.]

**Proposal to Reinsure the Business of The
Pacific Mutual Life Insurance Company
of California as Modified to Conform
With Proposed Amendments.**

The plan hereinafter outlined contemplates the organization of two corporations under the laws of the State of California. Said companies will be appropriately named, each will be under separate and independent management, and will be referred to herein as the "Life Company" and the "Accident Company." The Transamerica group of which the Occidental Life Insurance Company is a part, will pay to said corporations an aggregate of \$12,108,200.00. The Accident Company will receive a portion of the profits of the Life Company.

4050 The Pacific Mutual Life Insurance Company of California will be hereinafter designated as "Pacific Mutual." Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, as Conservator of the Pacific Mutual Life Insurance Company of California, will be hereinafter referred to as "Conservator." The Superior Court of the State of California in and for the County of Los Angeles will be hereinafter referred to as "the Court." Non-cancellable Income Policies will be hereinafter referred to as

4051 "Non-Can policies." The term "Commissioner" shall mean the present Insurance Commissioner of the State of California or his successor in office.

THE LIFE COMPANY

1. The Life Company shall have a capital of \$1,000,000, together with a surplus of \$2,000,000, said amounts aggregating \$3,000,000, to be paid into the company by the Transamerica
4052 group.

2. The Life Company will reinsure and assume the liabilities of the Pacific Mutual under all policies and contracts of insurance, except Non-Can policies, issued or assumed by the Pacific Mutual and outstanding and in force on July 22, 1936, or issued by the Conservator, subject, however, to any and all offsets, rights and defenses then or thereafter existing against said policies or contracts of insurance which would
4053 have been available to the Pacific Mutual or the Conservator. Liabilities under Non-Can policies are expressly excluded from the obligations assumed by the Life Company.

3. (a) The Life Company will agree to reinsure and assume, upon the terms and conditions hereinafter set forth, all policies other than Non-Can policies, which have lapsed, upon the reinstatement thereof in accordance with the terms and conditions of each such policy.

4054 (b) The foregoing paragraph (a) is modified to the extent that any policy, other than a Non-Can policy, lapsed since July 22, 1936, will be reinstated during the lifetime of the insured, provided the insured is not in such condition as to be eligible for benefits under his policy, without evidence of insurability, on written application therefor by the insured and payment of all premiums in arrears, if such application is made
4055 and premiums are paid within seventy-five (75) days after the approval by the Court of the reinsurance agreement contemplated by this proposal.

(c) Upon reinstatement of a lapsed policy it shall for all purposes be treated (but only from and after the date of reinstatement) the same as if it had been in force on the effective date of the reinsurance agreement contemplated herein, and
4056 shall be subject to the terms and conditions of said agreement.

4. The Life Company will pay in full all valid unpaid claims under policies issued or assumed by the Pacific Mutual, other than Non-Can policies, and all claims arising under the policies reinsured by it, and all liabilities which are incident to such policies, subject, however, to any and all defenses, offsets or counterclaims which would have been available to the Pacific Mutual or to the Conservator.

4057 5. (a) The Conservator shall sell, assign, convey and transfer, or cause to be sold, assigned, conveyed and transferred to the Life Company, vesting title thereto in the Life Company free and clear of encumbrances, tax or other liens or adverse claims, Pacific Mutual assets equal in value to the aggregate sum of the legal reserves required for the policies and contracts reinsured by the Life Company and such 4058 other liabilities assumed by the Life Company in its reinsurance agreement.

(b) All of the Pacific Mutual assets to be acquired by the Life Company, as hereinabove set forth, shall be taken at the aggregate values as shown in the financial statement of the Pacific Mutual Life Insurance Company as of July 22, 1936 (subject to appropriate adjustments for assets acquired or disposed of in the course of 4059 business transactions occurring since said date to the date of execution of the contract of reinsurance) provided the court shall find and decree that said values represent the fair value of said assets.

(c) The amount of the reserves required for the business reinsured and the aggregate value of the assets to be acquired by the Life Company shall be fixed and determined as of the effective

4060 date of the contemplated reinsurance agreement,
and the assets shall be taken at the value determined according to the provisions of 5.(b) above.

(d) On the assumption that the amount of the required reserves and the value of assets will be approximately the same on the effective date of the proposed reinsurance agreement as the asset values and reserves set forth in said financial statement as of July 22, 1936, the exhibits, 4061 introduced in the pending proceedings and marked Exhibits G-1, G-3 and G-4, will reflect the approximate amount of assets to be acquired, the approximate amount of required reserves, the approximate amount of liabilities to be assumed, and the capital structure of the Life Company.

6. The Life Company will engage in a general life, accident and health insurance business 4062 and will segregate its business by establishing three departments, namely:

(1) Participating Life Insurance Department;

(2) Non-Participating Life Insurance Department; and

(3) General Accident and Health Insurance Department.

4063 To each department will be allocated a portion of the Pacific Mutual assets acquired by the Life Company ~~equal in value~~ to the amount of reserves and liabilities of such department. The selection of assets allocated to each department shall be made by the Conservator and approved by the Transamerica group.

7. The Life Company will assume no claims or liabilities of any kind or nature against the
4064 Pacific Mutual or the Conservator other than those hereinabove set forth. The Life Company will pay to the Conservator such amount of money, if any, hereafter paid by the Conservator in satisfaction of claims filed by dissenting holders of policies reinsured under the terms of this proposal and allowed by the Court. There shall be no moratorium on policy loans or surrenders for cash value.

4065 8. Representation on the Board of Directors of the Life Company will be offered to interested groups of policyholders and agents; and in the conduct of its business the Life Company will retain all satisfactory employees of the Pacific Mutual.

9. The Life Company will enter into equitable agency agreements with such agents of the Pacific Mutual as desire to become associated with

4066 the Life Company, and so long as any such agent remains in the service of the Life Company, renewal commissions will be paid such agent on policies written by him for the Pacific Mutual and reinsured by the Life Company, in accordance with the terms and provisions of his Pacific Mutual agency contract covering such business. In computing commissions under Pacific Mutual agency contracts policies reinsured by the Life
4067 Company shall be considered a continuation of existing policies and not the writing of new business.

10. The Life Company will pay to the Accident Company fifty per cent (50%) of the net profits of the business of its Accident Department, payments to be made in annual installments, subject to the terms and conditions and termination of such payments, as hereinafter set
4068 forth.

THE ACCIDENT COMPANY

11. The capital stock of the Accident Company will consist of 254,100 shares of Class A common stock and 254,100 shares of Class B common stock. All of said stock shall be of the par value of \$1.00 per share and shall have the same voting and dividend rights. The Trans-

4069 america group will pay \$508,200 for said stock, totaling 508,200 shares. Class A common stock shall be callable at any time within ten (10) years at \$30 per share. In the event of liquidation of the Accident Company after restoration and restitution of full benefits and agents' commissions, Class A stock shall participate in the distribution of assets to the extent of \$10 per share, after which the Class B stock shall participate, in such distribution of assets to the extent of \$10 per share, and thereafter both classes of stock shall participate equally in any distribution of assets.

4071 The Class A stock of the Accident Company shall either be delivered immediately to the stockholders of Pacific Mutual, or upon the order of the Court, be impounded with the Insurance Commissioner until there shall have been full and complete restoration of benefits under Non-Can policies, full restitution in deficiencies in benefit payments to Non-Can policyholders, and full restoration and restitution to agents on account of commissions relating to Non-Can policies, or upon such other terms and conditions as may be set forth in said order of the Court.

12. In addition to the payment of \$508,200 as set forth in the preceding paragraph, the

4072 Transamerica group will pay to the Accident Company \$1,100,000 and will make further payments to the Accident Company of a sum of \$7,500,000, payable in installments at the rate of \$500,000 per year.

For the purpose of providing additional initial surplus of the Accident Company, the Transamerica group will immediately collateralize the first annual payment in the sum of \$500,000 so
4073 as to qualify the sum so collateralized as a present admissible asset of the Accident Company to bear interest at the rate of $4\frac{1}{4}\%$; and agrees to likewise collateralize and qualify the second annual payment of \$500,000, if necessary, to cover and pay any expenses or losses of the Accident Company which cannot be defrayed out of the Accident Company's available surplus.

4074 The Transamerica group reserves the right to make payment at any time prior to the expiration of said fifteen year period of all or any part of the unpaid amount of said sum of \$7,500,000.

13. (a) The Accident Company will assume and reinsure liabilities of the Pacific Mutual and the Conservator under all Non-Can Accident and Health policies issued by the Pacific Mutual and in force on the effective date of the agreement.

4075 contemplated by this proposal, subject to the policy terms and conditions and also to the terms, conditions and limitations, and only to the extent, hereinafter specifically provided, and subject also to any and all claims, defenses, actions and rights in connection therewith, which would have been available to the Pacific Mutual or the Conservator.

4076 (b) The Accident Company will pay, without deduction, every valid claim for disability benefits under any such policy for disability arising prior to July 22, 1936, with respect to which claim or notice of claim was duly filed in accordance with the terms of the policy on or before August 12, 1936, and will likewise pay all liabilities, without deduction, under settlement agreements made by the Pacific Mutual with claimants under any such policy. All such claims are sub-
4077 ject, however, to all defenses and rights which would have been available to the Pacific Mutual or to the Conservator.

(c) As to all other claims for disability benefits under Non-Can policies, now pending or hereafter arising, the Accident Company's liability in any such case shall be limited to the percentages of the monthly disability benefits set forth in the following schedule:

4078

Prem. Class	Issued under Rate Books	Policy Forms	Issued Under Policy No.	Percentage of Original Monthly Benefit Assumed New Company
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1918	A1445-A1445Z A1445Y-A1445X A1445W	A231 to A288, inc.	2658601 to 2698150 4600501 to 4628000 4711101 to 4712600 4730901 to 4731100	50%
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4079

1921	A1687-A1687Z A1687Y-A1687X A1687W	A291 to A 294, inc. A365-A366	4628001 to 4700000	59%
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1926	A1958-A1958Z	A382-A383 A386-A387 A387Z	5500001 to 5600000	65%
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1929	A2293	A382-A383 A386-A387 A387Z	5600001 to 5620000	72%
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4080

1931	A2367	A753 to A756, inc. A763 - A764	5620001 to 5635000	78%
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1932	A2432-A2432Z A2499	A775 to A780, inc.	5635001 to 6000000	93%
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	A2499	Aggregate A1216 to A1221, inc.	6500001 to 7000000	93%
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1935	A2567	Aggregate A1226 to A1239, inc.	7000001 to 7100000	93%
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4081 Benefits under all such policies shall be reduced to the extent indicated in the foregoing schedule but shall be subject to restoration of monthly benefits and restitution of deficiencies in installments previously paid as hereinafter provided.

(d) Notwithstanding the reduction in benefits and the limitation of the obligation of the Accident Company to make monthly disability payments, as set forth in the preceding paragraph, each holder of any such policy, to be entitled to the benefit of the proposed reinsurance agreement, shall be obligated to continue payment of premiums in the amount stipulated in his policy.

4082 14. (a) At the end of five (5) years from the effective date of the contemplated reinsurance agreement, or at such earlier date as may be fixed by the Commissioner, the reserve requirements shall be recomputed and if reserves and funds available for reserves are then sufficient to justify an increase in the schedule of benefits set forth in paragraph 13 (c) hereof, benefit payments on claims then in force at reduced rates and benefits on future claims will be increased to a rate approved by the Commissioner. Thereafter redetermination of reserve requirements and available reserves for the purpose of adjusting benefit rates shall be made from time to time upon request of the Accident Company or the Commissioner, to the end that

4083

4084 full benefit payments under said policies may ultimately be restored.

Agents' commissions on Non-Can policies are to be paid as provided for in paragraph 19 hereof.

(b) Surplus of the Accident Company (not including funds received from the Life Company representing a share of the net profits of its Accident and Health Department) not required for the successful conduct and operation of its
4085 business, shall be used for the purpose of restoring benefits under all policies not in benefit and increasing future payments under policies in benefit. Such available funds shall from time to time be added to the reserves for such policies until such time as adequate reserves have been established for the full restoration of such policies, at which time the Accident Company will fully assume and reinsure all such policies not in benefit, and at said time said policies not in benefit shall be deemed to be fully restored. As the
4086 rate of benefits is increased or restored, the rate of agents' commissions shall be correspondingly increased.

(c) Funds received from the Life Company, representing one-half of the net profits of its Accident and Health Department, shall be used exclusively for the purpose of making up deficiency in payments of disability benefits to claimants who have been paid less than they were

4087 entitled to receive under their policies as originally written, and in making up deficiencies in payments to agents who have been paid less than they were entitled to receive as commissions relating to Non-Can policies.

After policies not in benefit shall have been fully reinsured, all surplus funds of the Accident Company not required for the successful conduct and operation of its business, shall be used for the purpose of making up deficiency in payments
4088 of disability benefits to claimants who have been paid less than they were entitled to receive under their policies as originally written, and of deficiency in payments of commissions to agents.

(d) The Accident Company shall not be required to pay or restore full benefits under policies as originally written, except in the manner and to the extent hereinabove set forth.

(e) Upon full restoration of benefits, payments of deficiencies in benefit installments previously paid and restoration and restitution of commissions to agents, the Life Company will be released from its obligation to pay to the Accident Company a portion of the net profits of the Accident and Health Department.
4089

(f) No dividends shall be paid to stockholders of the Accident Company until after full restoration of benefits, payment of deficiencies in benefit installments previously paid and restoration and restitution of commissions to agents (in

4090 each case without interest on deficiencies), and until a surplus of \$2,500,000 shall have been accumulated.

(g) The basis to be used in determining the adequacy of reserves shall be the New York Standard Table, with the variable factor limited to the actual experience of the Pacific Mutual and/or the Accident Company with Non-Can Accident and Health insurance, or such other
4091 table or basis as shall be required by the laws of the State of California.

15. All of the Pacific Mutual assets not transferred and delivered to the Life Company, and the proceeds of any claim, right or cause of action collected by the Conservator, shall be transferred, assigned and conveyed to the Accident Company. The assets to be transferred to the Accident Company shall be in accordance with
4092 the allocation to the Accident and Health Department of Pacific Mutual, as shown in said financial statement of July 22, 1936 (subject to appropriate adjustments for assets acquired or disposed of in the course of business transactions occurring since said date to date of execution of the contract of reinsurance). The selection of additional assets to be transferred to the Accident Company pursuant to this plan, shall be made by the Commissioner and approved by Transamerica group.

4093 16. On the assumption that the value of the assets and the required reserves will be approximately the same on the effective date of the proposed reinsurance agreement as the asset values and reserves set forth in said financial statement of July 22, 1936, the exhibits introduced in the pending proceedings and marked Exhibits G-2, G-3 and G-4, indicate the approximate amount of assets to be taken over by the Accident Company, the approximate amount of required reserves, the 4094 approximate amount of liabilities to be assumed and reinsured by the Accident Company, and the capital structure of the Accident Company. The proposal to pay benefits, on claims arising subsequent to July 22, 1936, according to the schedule of reduced benefits hereinabove set forth, is based upon the figures and statistics contained in said financial statement of July 22, 1936, and shall be 4095 subject to examination, verification, adjustment and extension of the data contained in said financial statement, to the effective date of the agreement contemplated by this proposal.

17. Representation on the Board of Directors of the Accident Company will be offered to interested groups of policyholders and agents; and in the conduct of its business the Accident Company will retain all satisfactory employees of the Pacific Mutual.

18. The Accident Company shall have the right to engage in a general accident and health insurance business.

4096 19. The Accident Company will enter into equitable agreements with such agents of the Pacific Mutual as desire to become associated with the Accident Company, and so long as any such agent remains in the service of the Accident Company, renewal commissions will be paid such agent on policies written by him for the Pacific Mutual and reinsured by the Accident Company, in accordance with the terms and provisions of his Pacific Mutual agency contract covering such
4097 business, as herein modified. This proposal contemplates the temporary payment of disability benefits under the Non-Can policies on a reduced basis. It is believed that agents are interested in the restoration of full benefit payments under Non-Can policies at the earliest practicable date, and, to that end, are willing to cooperate with proponent by deferring payment of a part of their commissions which would otherwise be payable to them. It is proposed that commissions
4098 payable to agents on Non-Can policies shall be adjusted by a reduction thereof corresponding to the percentage of reduction of benefit payments in effect for each class of policies as shown in the schedule hereinabove set forth. As the rate of benefit payments under policies is increased, commissions to agents will at the same time be correspondingly increased.

20. The Accident Company will agree to pay the Conservator a sum equal to all legal and valid claims filed with the Conservator and allowed by

4099 the Court, except valid claims of any character which may be allowed by the Court and paid by the Conservator prior to the transfer and delivery of Pacific Mutual assets to the Accident Company. In the event that claims of any kind not specifically assumed by the Life Company and not arising out of the business transacted by said Company on its own account, shall be asserted against the Life Company and the Life Company shall be required by the final judgment
4100 of any court of competent jurisdiction to pay or discharge such claims, or in case the Life Company is made a party defendant in any suit or suits arising out of the pending proceedings, the Accident Company shall reimburse the Life Company for all amounts so determined and paid and also its reasonable costs and expenses incurred in connection with any such litigation.

The foregoing sets forth the essential features of the plan of the Transamerica group for the
4101 reinsurance of the business of Pacific Mutual, as modified and amended. If this proposal is accepted, appropriate agreements will be prepared and executed which will clearly and definitely express the intentions and the obligations of the parties thereto. In addition to the matters outlined in this proposal, such agreements will contain such other provisions as may be mutually agreed upon by the Conservator and the Transamerica group, including such provisions as are usually contained in reinsurance agreements.

4102 In a letter addressed to the California Insurance Commissioner, dated October 18, 1936, Transamerica group further states:

"If, however, it is your opinion and the view of the Court that restoration of benefits and restitution in respect of deficiencies can be made in a manner which is deemed to be more equitable than as proposed by us, we will agree that all of said funds of the Accident Company from whatever source shall be applied for the benefit of

4103 Non-Can policyholders on such basis as the Court may find proper, without payment, however, of interest on deficiencies."

and the plan set forth in this proposal will be amended in this respect to conform with the Court's determination.

4104 If, in the opinion of the Conservator and the Court, the proposal hereinabove outlined can be modified so as to facilitate and make more effective its purposes, the Transamerica group will give careful and sympathetic consideration to any suggestions for the improvement of its general plan, to the end that all interested persons, and particularly policyholders in all groups, may be accorded treatment that is as fair, just and equitable as it is possible to secure under all the circumstances.

Dated at Los Angeles, California, November 21, 1936.

L. M. GIANNINI.

4105

**LIFE COMPANY
PRO-FORMA FINANCIAL STATEMENT**
July 22, 1936

Assets:

Cash Paid in by Transamerica Group	3,000,000.00
Life Departments (Exhibit 4)	190,206,813.27
Accident & Health Department (Exhibit 4)	2,419,804.26

4106

Total Assets

195,626,617.53

Liabilities & Reserves:

Life Dept. Liabilities & Reserves (Exhibit 4)	190,206,813.27
Reserve for Supplementary Contracts	198,000.00
Agents Commissions Accrued	117,284.67
Taxes Accrued	100,000.00
Reserve for Claim Investigation	30,000.00
Reserve for Unpaid Losses—A. & H. Dept.	614,987.00
Reserve for Unearned Premium—A. & H. Dept.	1,359,532.59

4107

Total Liabilities & Reserves

192,626,617.53

Capital & Surplus:

Capital Stock	1,000,000.00
Surplus	2,000,000.00

Total Capital & Surplus

3,000,000.00

**Total Liabilities, Reserves,
Capital & Surplus**

195,626,617.53

4108

EXHIBIT G-2

ACCIDENT COMPANY
PRO-FORMA FINANCIAL STATEMENT
July 22, 1936.

Assets:

	Cash Paid in by Transamerica Group	1,608,200.00
	*Note Receivable—Transamerica Group	500,000.00
4109	*Deferred Receivable—Transamerica Group	7,000,000.00
	Other Assets (See Exhibit 4)	30,082,794.15
	Total Assets	39,190,994.15

Liabilities & Reserves:

	Unearned Int. & Rent Paid in Advance	587.23
4110	Salaries, Rents & Other Expense Accrued	34,000.00
	Agents Commissions-Accrued	40,000.00
	Taxes Accrued	59,050.00
	Reserve for Conservatorship Exp., etc.	191,946.01
	Reserve for Return Premiums—Suspense	17,291.43
	Reserve for Claim Investigation & Exp.	820,020.00
	Reserve for Real Estate	308,224.45
	Reserve for Mortgage Loans	128,289.04

4111	Reserve for Security Fluctuation	105,648.00
	Reserve for Unpaid Losses & Claims	19,554,000.00
	Reserve for Unearned Premium (1,550,000) and for Active Policies—to maintain schedule of benefits set forth in paragraph 13(c) of proposal	9,600,000.00
	<hr/> Total Liabilities & Reserves	30,859,056.16
4112	Capital & Surplus:	
	Capital Stock—Class "A"—\$1 Par, 254,100 shares	254,100.00
	Capital Stock—Class "B"—\$1 Par, 254,100 shares	254,100.00
		508,200.00
	Surplus (of which \$7,000,000.00 is deferred)	7,823,737.99
	<hr/> Total Liabilities, Reserves, Capital & Surplus	<hr/> 39,190,994.15 <hr/>
4113		

*These items represent the payments to be made by Transamerica Group at the rate of \$500,000 per year for fifteen years under the terms of its proposal. The first payment which is due one year after the date of the agreement contemplated by the proposal will be qualified as an immediate admissible asset by being reduced to a promissory note, due one year, properly secured by collateral, and bearing interest at the at the rate of 4½% per annum.

Transamerica Group will likewise qualify the second of such annual payments if necessary to cover any expenses or losses of the Company which cannot be defrayed out of the Company's surplus.

PACIFIC MUTUAL LIFE INSURANCE COMPANY

Financial Statement Showing Allocation of Assets & Liabilities to Life Company and Accident Company July 22, 1936, Constructed from July 22, 1936 Financial Statement of the Pacific Mutual Life Insurance Company.

	Total	To Life Company	To Accident Company
<hr/>			
Assets:			
Total Admitted Assets of Life Dept. (Ex. 5)	196,300,381.38	190,206,813.27	6,093,568.11
Total Admitted Assets of A. & H. Dept. (Ex. 5)	26,409,030.30	2,419,804.26	23,989,226.04
	<hr/>	<hr/>	<hr/>
Total Assets	222,709,411.68	192,626,617.53	30,082,794.15
	<hr/>	<hr/>	<hr/>

Liabilities & Reserves:

Total Liab. & Reserves of Life Dept. (Ex. 5)	190,206,813.27	190,206,813.27	—
Unearned Int. & Rent Paid in Advance	587.23		587.23
Salaries, Rent & Other Exp. Accrued	34,000.00		34,000.00
*Agents Commissions Accrued	157,284.67	117,284.67	40,000.00
*Taxes Accrued (A. & H. Dept.)	159,050.00	100,000.00	59,050.00
Reserve for Conservatorship Exp. etc.	191,946.01		191,946.01

Reserve for Return Premium Suspense	17,291.43		17,291.43
*Reserve for Claim Investiga- tion Exp.	850,020.00	30,000.00	820,020.00
Reserve for Real Estate	308,224.45		308,224.45
Reserve for Mortgage Loans	128,289.04		128,289.04
Reserve for Security Fluctua- tion	105,648.00		105,648.00
*Reserve for Supplementary Contracts (A. & H. Dept.)	198,000.00	198,000.00	—
Reserve for Unpaid Losses & Claims (A. & H. Dept.)	20,168,987.00	614,987.00	19,554,000.00
*Reserve for Unearned Prem- ium (A. & H. Dept.)	2,909,532.59	1,359,532.59	1,550,000.00
Additional Reserve for Non- Can Policies	24,183,742.00		24,183,742.00
	<hr/>	<hr/>	<hr/>
Total Liabilities & Re- serves	239,619,415.69	192,626,617.53	46,992,798.16
Capital & Surplus (or Deficit)			
Capital	508,200.00	254,100.00	254,100.00
Surplus (Deficit)	(17,418,204.01)	(254,100.00)	(17,164,104.01)
	<hr/>	<hr/>	<hr/>
Total Liabilities, Reserves & Capital	222,709,411.68	192,626,617.53	30,082,794.15
	<hr/>	<hr/>	<hr/>

*Allocation of these items between the two companies is arbitrary and subject to minor adjustment upon ascertainment of correct figures.

4120

EXHIBIT G-4

PACIFIC MUTUAL LIFE INSURANCE COMPANY
COMBINED FINANCIAL STATEMENT OF LIFE AND ACCIDENT
DEPARTMENTS CONSTRUCTED FROM STATEMENTS SUB-
MITTED BY INSURANCE COMMISSIONER JULY 22, 1936

Life Dept. Accident Dept. Total

LEDGER ASSETS

4121

Book value of real estate	16,394,057.98	2,610,249.56	19,004,307.54
Mortgage loans on real estate	68,235,437.70	16,390,154.40	84,625,592.10
Loans secured by Bonds, Stocks etc.	3,739,188.07		3,739,188.07
Loans to Policyholders	32,623,109.42		32,623,109.42
Premium Notes on Pol. in force	2,280,871.80		2,280,871.80
Book value of bonds	55,002,791.48	4,095,072.65	59,097,864.13
Book value of stocks	4,743,794.82	2,127,034.05	6,870,828.87
Cash in company's office	408,873.00	152,730.18	561,603.18
Cash in Trust Co. & Bk. Dep.— no int.	4,913,750.28	189,103.65	5,102,853.93
Cash in Trust Co. & Bk. Dep.— on int.	3,200,000.00		3,200,000.00
Bills Receivable	15,156.06		15,156.06
Agents' Balances	205,558.66	28,733.82	234,292.48
		3,483.15	3,483.15
Deposits in Suspended Banks & Susp. item	-244,402.10	-23,429.99	-267,832.09
Gross premiums, less return prem- iums and insurance in course of coll.		617,995.46	617,995.46
Accounts Receivable.		30.00	30.00
Treasury Stock.		273.00	273.00
Due for reinsurance on paid losses		2,691.22	2,691.22
Employees stock purchase plan		251,583.76	251,583.76
Total Ledger Assets	191,518,187.17	26,445,704.91	217,963,892.08

4122

4123

NON-LEDGER ASSETS

Interest due & accrued on mtges.	636,571.40	159,419.49	795,990.89
Do Col. loans	11,821.65		11,821.65
Do Pol. loans	1,251,572.16		1,251,572.16
Do Bonds	484,495.17	49,328.72	533,823.89
Do Deposits	6,607.33		6,607.33
Rents Accrued	15,298.57	2,295.45	17,594.02
Market val. of stocks over book value	387,238.31	201,665.95	588,904.26
Net uncollected and def. premiums	3,376,937.56		3,376,937.56
Allowed value col. loans not on ledger	9,100.69		9,100.69
Gross Assets	197,697,830.01	26,858,414.52	224,556,244.53

4124

DEDUCT ASSETS NOT ADMITTED

Payroll & Salary Suspense Acct.	21,926.23		21,926.23
Other Susp. & Cashier's abeyance & agents balances	247,265.36	28,733.82	275,999.18
Bills Receivable	15,156.06	30.00	15,186.06
Premiums Notes & Loans in excess of val.	5,000.00		5,000.00
Deposits in suspended banks	32,321.02	3,483.15	35,804.17
Book value of bonds over market	1,075,779.96	160,639.26	1,236,419.22
Treasury Stock (Company's stock owned)		273.00	273.00
Employees stock purchase plan		251,583.76	251,583.76
Certain premiums in course of coll.		4,641.23	4,641.23
Total Assets Not Admitted	1,397,448.63	449,384.22	1,846,832.85
Total Admitted Assets	196,300,381.38	26,409,030.30	222,709,411.68

4125

4126

Exhibit G-4
(Continued)

**PACIFIC MUTUAL LIFE INSURANCE CO.
COMBINED FINANCIAL STATEMENT
JULY 22, 1936**

	Life Dept.	Accident Dept.	Total
<hr/>			
LIABILITIES, SURPLUS & OTHER FUNDS			
4127 Net Reserves after deducting, \$208,966 for reinsured risks	160,746,515.00		160,746,515.00
Res. for T. & P. disability in- cluded in life pol.	10,648,781.00		10,648,781.00
Present Value of amounts not yet due on sup. contracts not involv- ing life contingencies	6,041,375.00		6,041,375.00
Res. for unpd. losses & Claims (Life Dept.)	1,612,409.00		1,612,409.00
Due and unpaid on Sup. contracts	20,533.56		20,533.56
4128 Div. left with co. to accumulate at int.	4,427,612.00		4,427,612.00
Gross premiums paid in advance	1,526,783.00		1,526,783.00
Unearned int & Rent paid in ad- vance	662,199.90	587.23	662,787.13
Agents commissions due or ac- crued	18,650.69	157,284.67	175,935.36
Salaries, rents & expenses ac- crued	102,559.35	34,000.00	136,559.35
Medical examiners and legal fees accrued	36,331.41		36,331.41
Accrued taxes	736,822.90	159,050.00	895,873.00

4129	Dividends due policyholders	43,650.00		43,650.00
	Div. declared on or apportioned to pol.	1,068,313.00		1,068,313.00
	Do to			
	def. div. pol.	18,452.85		18,452.85
	Further div. res. on def. div. pol.	59,631.00		59,631.00
	Renewal Bonus Fund	23,039.00		23,039.00
	Miscellaneous liabilities	15,786.93		15,786.93
	Reserve for Real Estate	494,083.17	308,224.45	802,307.62
	" " Mtge. Loans	952,768.34	128,289.04	1,081,057.38
4130	" " Col. loans	567,516.07		567,516.07
	" " Security Fluctuation	383,000.00	105,648.00	488,648.00
	" " Unpaid losses & claims		20,168,987.00	20,168,987.00
	" " Investigation & Claim Exp.		850,020.00	850,020.00
	" " Unearned premiums		2,909,532.59	2,909,532.59
	" " Supplementary Contracts		198,000.00	198,000.00
	" " Return Premiums Suspense		17,291.43	17,291.43
	" " Non-Can policies		24,183,742.00	24,183,742.00
	Total	190,206,813.27	49,220,656.41	239,427,469.68
4131	CAPITAL:	254,100.00	254,100.00	508,200.00
	Surplus or	5,839,468.11		
	(Deficit)		(-23,065,726.11)	(-17,226,258.00)
	Total Liabilities, Surplus & Other Funds	196,300,381.38	26,409,030.30	222,709,411.68

Endorsed: Filed (as per minute order 12/2/36) Dec. 2, 1936.
 L. E. Lampton, county clerk; by A. G. Stanham, deputy. Dept.
 .11.

4132 [TITLE OF COURT AND CAUSE.]

Order Approving Rehabilitation and Reinsurance Agreement.

The petition for approval of rehabilitation and reinsurance agreement verified by Samuel L. Carpenter, Jr., on September 25, 1936, and filed in the above-entitled action on the same date, having duly come on for hearing on October 19, 1936, upon the order to show cause with respect to rehabilitation and reinsurance issued by this

4133 court under date of September 25, 1936; and it appearing that notice of said hearing has been duly given to the persons and in the manner required by said order to show cause; and said hearing having been in progress from day to day thereafter to and including December 3, 1936; and

4134 The petitioner, Samuel L. Carpenter, Jr., Insurance Commissioner of the state of California, as conservator of The Pacific Mutual Life Insurance Company of California, appearing and being represented by U. S. Webb, attorney-general of the state of California, John L. Flynn, deputy attorney-general of the state of California, Messrs. Mitchell, Silberberg & Knupp and Frank L. Guereña, his attorneys; respondent, The Pacific Mutual Life Insurance Company of California, appearing and being represented by Messrs. Overton, Lyman & Plumb, its attorneys; and various other persons interested herein appearing and being represented by their respective attorneys, as briefly indicated hereafter, to wit:

4135	Names of Interested Persons	Interest Alleged	Attorneys Representing
	Charles Ross Cooper et al.	Holders of Non-Can Policies	Hugh K. McKevitt
	Rupert B. Turnbull et al. for themselves and for other Non-Cancellable Policyholders similarly situated	Holders of Non-Can Policies.	Rupert B. Turnbull
	Francis Adams, for himself and for other Non-Cancellable Policyholders similarly situated	Holder of Non-Can Policy, under which advanced settlement of disability claim is pending.	Rupert B. Turnbull
4136	George W. Manierre, and B. Robert Getts, on their own behalf and on behalf of all similarly situated policyholders	Holders of Non-Can Policies	Messrs. Manierre & Cuthbertson
	E. B. Tilton et al.	Holders of Non-Can Policies	Kenyon F. Lee
	Vernon Bettin and William George Dickinson	Holders of Non-Can Policies	Messrs. Bettin, Painter & Wait
4137	Marshall D. Hall and Joseph C. McManus on behalf of themselves and other holders of Non-Cancellable Income Policies	Holders of Non-Can Policies	H. S. Dottenheim
	Neil S. McCarthy	Holder of Non-Can Policy	Neil S. McCarthy
	Ralph R. Huesman	Commercial Accident Policyholder; Non-Can Policyholder and Life Policyholder.	Neil S. McCarthy

138	Names of Interested Persons	Interest Alleged	Attorneys Representing
	Broadtown Investment Company, a corporation	Shareholder and beneficiary under Life Policies	Neil S. McCarthy
	Dr. Arthur B. Allen et al.	Holders of Non-Can Policies	W. B. Etheridge
	David Lynn Openshaw et al.	Holders of Non-Can Policies	Delvy T. Walton
	Henry B. Senn	Holder of Non-Can Policy	Albert E. Coger
139	Herbert Freston	Holder of Non-Can Policy	Herbert Freston
	Robert J. Webb and Philip M. Klutznick, for themselves and all other persons similarly situated	Holders of Non-Can Policies	Messrs. Jacob J. Lieberman and Aaron B. Rosenthal
	R. Rabinowitz	Holder of Non-Can and Life Policies	Lawler & Felix
	Roscoe R. Hess	Holder of Non-Can Policy	Roscoe R. Hess and David R. Rubin
140	G. C. Parsons, J. A. Marvin and G. R. Snider, et al., on behalf of themselves and all other holders of Non-Cancellable Policies, and as members of a Protective Committee for Holders of Non-Cancellable Income Policies	Holders of Non-Can Policies	Messrs. Chapman, Snider, Duke & Landis, Hiram W. Johnson, Jr. Frank P. Doherty
	William H. Neblett	Holder of Life Policy	William H. Neblett, R. Dean Warner and LeRoy B. Lorenz

4141	Names of Interested Persons	Interest Alleged	Attorneys Representing
	Austin O. Martin	Holder of Non-Can Policy	Rex Hardy
	Rex Hardy	Holder of Non-Can Policy	Rex Hardy
	William A. Sullivan	Insurance Commissioner of the State of Washington	Ivan Merrick
	Arthur E. White	Holder of Non-Can Policy	Arthur E. White
4142	George I. Cochran et al.	Stockholders	Oscar Lawler and Harold Judson
	Wilbur A. Beckett et al.	Stockholders	Shattuck, Davis & Story
	Arthur D. Wunner	Former General Agent	Paul Overton
	C. N. Wesley et al.	Non-Can Policyholders	Latham, Watkins & Bouchard
	Wilbur G. Katz et al.	Holders of Non-Can Policies	Bell, Boyd & Marshall Newlin & Ashburn
4143	Carl C. Katleman et al., for himself and all others similarly situated	Holders of Non-Can Policies	Carl C. Katleman
	Andrew J. Copp, Jr. on his own behalf	Holder of Non-Can Policy	Andrew J. Copp, Jr.
	Ralph C. Hamlin	Holder of Non-Can Policy	Garnet C. Rainey
	Rowe Sanderson et al.	Non-Can Policyholders	Chapman & Chapman
	Robert Casamajor et al.	Non-Can Policyholders	Hahn & Hahn
	Ben S. Hunter	Life, Non-Can and Commercial Policyholder	Ben S. Hunter

4144 Names of Interested Persons	Interest Alleged	Attorneys Representing
Clara M. Garunan et al.	Allegedly, a Non-Can Policyholder	M. W. Purcell
John P. Oliver	Non-Can Policyholders	John P. Oliver
Harold S. Cook, et al.	Stockholders' Protective Committee	Loeb, Walker & Loeb
Edwin Janss et al	Policyholders' Committee representing commercial policyholders, non-can policyholders and life policyholders	William M. Rains
4145 E. A. Conway	Non-Can Policyholder, and as Secretary of State and Ex-Officio Commissioner of Insurance of the State of Louisiana, on behalf of all policyholders in that state	D. M. Ellison, Attorney for the Secretary of State of Louisiana
Carroll C. Day, Harry C. Fabling, Joseph M. Gantz, Jack Paschall and Ralph J. Wetzel	On their own behalf and on behalf of each of them, and on behalf of all general agents and managers of The Pacific Mutual Life Insurance Company of California (each of said named interveners being a general agent, life policyholder, non-can policyholder, and stockholder	Cosgrove & O'Neal
4146 J. Parker Evans, on behalf of himself and all other holders of active life non-cancellable income policies issued in the State of Alabama who may wish to join with him in the proceeding	Non-Can Policyholder	A. A. Carmichael, Attorney-General of Alabama, and Frank E. Spain, Special Assistant Attorney-General of Alabama;

4147 and

Evidence both oral and documentary having been introduced and full opportunity having been afforded to all persons appearing either in person or by counsel and to all other persons interested herein to state, discuss and urge any and all objections they, or any of them, might have to the proposed rehabilitation and reinsurance agreement or to these proceedings, or to any or all of the matters or things herein adjudicated;

4148 and this court having heard and considered all objections and all evidence introduced and having considered the provisions of said proposed rehabilitation and reinsurance agreement and having duly read and considered the order permitting the performance of acts and the making of payments necessary to conserve and protect assets and to prevent the waste thereof made and entered herein by this court on August 17, 1936; and having duly read and considered that certain

4149 rehabilitation, sale and transfer of assets and reinsurance agreement dated July 23, 1936, and on file herein, more specifically referred to in said order of August 17, 1936; and having also considered all files, papers, records and proceedings herein; and the matter having been fully argued and the court being fully advised in the premises, and good cause appearing therefor,

It is hereby ordered, adjudged and decreed:

1. That notice of this hearing has been duly given under, pursuant to, and in accordance with

4150 the terms of the order to show cause aforesaid; that such notice constitutes and constituted proper, practicable, reasonable, just and sufficient notice of the hearing herein; that all persons interested in respondent corporation, its properties, assets, or estate have been given and have had a right and a reasonable opportunity to appear and be heard upon the question of the fairness, justice, equity, feasibility and propriety of said proposed rehabilitation and reinsurance agreement
4151 and the plan embodied therein, and upon all phases of these proceedings, and upon each, all and every, the matters and things herein adjudicated.

2. That the document attached hereto, marked Exhibit "A," and made a part hereof, is a full, true and correct copy of the proposed rehabilitation and reinsurance agreement; that the execution thereof has been proposed by petitioner; that petitioner recommends the plan therein contained;
4152 and that said Exhibit "A" embodies the plan hereby approved by this court and is the agreement, the execution whereof is hereby approved by this court.

3. That all policyholders, creditors and stockholders of and all other persons interested in respondent corporation, its properties, assets, or estate are, by representation or otherwise, parties to the within proceedings, have been given proper and adequate notice of the hearing on the petition pursuant to which this order is entered, and ade-

4153 quate opportunity to be heard hereon and herein;
and they are, and each of them is, bound by all
proceedings taken herein, and more particularly
by the terms of this order.

4. That adequate provision is made by the
said rehabilitation and reinsurance agreement,
Exhibit "A," for each and every class of policy-
holders, creditors and stockholders of respondent
corporation and all other persons interested in
respondent corporation, its properties, assets, or
4154 estate; that neither said agreement nor the plan
therein embodied discriminates unfairly or ille-
gally in favor of any class of policyholders, cred-
itors, stockholders, or other persons interested in
respondent corporation, its properties, assets, or
estate; that said agreement and the plan therein
embodied do, and each of them does, fairly and
equitably protect and adjust the rights, obliga-
tions and liabilities of all persons concerned here-
in; and they do and each of them does provide
4155 for the removal of the causes which have made
these proceedings necessary.

5. That the total value of the assets of re-
spondent corporation, as of December 31, 1935,
and as of July 22, 1936, was exceeded on said
dates, and each of said dates, by the amount
necessary to provide for its liabilities and for
reinsurance of all of its outstanding risks, such
reinsurance being estimated with respect to its
life insurance risks at the rates prescribed in

4156 section 986 of the Insurance Code of the state of California, and such reinsurance being estimated with respect to its disability insurance risks in accordance with standards properly prescribed by the Insurance Commissioner of the State of California which would provide adequate safeguards for its policyholders, creditors and the public. That on July 22, 1936, respondent corporation was in such condition that its further transaction of business would be hazardous to its policy-
4157 holders and creditors and to the public.

6. That the properties, assets and estate of respondent corporation would be of substantially less value if they were sold separately or in separate units or parcels than if they were sold as a going concern; that respondent corporation had on July 22, 1936, intangible assets consisting of good-will, agency organization and going concern values which were and are of great value, to wit, of several million dollars; that the said rehabilitation and reinsurance agreement, Exhibit "A,"
4158 is designed to accomplish the preservation and conservation of said intangible assets, and that the same do now exist and will hereafter continue to exist in the hands of the new company, described in said rehabilitation and reinsurance agreement.

7. That the plan embodied in said rehabilitation and reinsurance agreement, Exhibit "A," is feasible, and that operations under said agreement are feasible.

4159 8. That said rehabilitation and reinsurance agreement, and the plan embodied therein, are, and each of them is, fair, just and equitable.

9. That the said rehabilitation and reinsurance agreement, and the plan embodied therein, present and afford, and each of them presents and affords, a feasible method of providing, within a reasonable time, full restoration of the benefits under the non-cancellable income policies of respondent corporation to the extent that the
4160 payment of such benefits is not initially assumed by the new company, as described in said rehabilitation and reinsurance agreement.

10. That all policyholders and creditors of respondent corporation have been given and are afforded by said rehabilitation and reinsurance agreement a fair, just and timely opportunity to participate in the benefits thereof and in the plan therein embodied.

4161 11. That the acts of petitioner, as conservator, in organizing and subscribing to and acquiring the capital stock of Pacific Mutual Life Insurance Company, a California corporation, and in transferring to said corporation the sum of three million dollars (\$3,000,000.00) out of the assets in his hands as such conservator in connection therewith, be and the same are hereby ratified, confirmed and approved.

12. That the transfer and conveyance heretofore made of the assets, properties, books and

4162 records of respondent corporation to Pacific Mutual Life Insurance Company be and the same are hereby ratified, confirmed and approved.

13. That said rehabilitation and reinsurance agreement, and each and all of the terms and conditions thereof, and the plan therein embodied are, and each of them is, hereby approved; that the proposed action of petitioner in executing and entering into said agreement is hereby approved; and that petitioner is hereby authorized and directed to execute and enter into an agreement in the form of Exhibit "A" attached hereto, and upon the terms and conditions therein contained.

4164 14. That petitioner be, and he is hereby, authorized to transfer, convey, release, set over and assign to Pacific Mutual Life Insurance Company, in consideration of its execution of said rehabilitation and reinsurance agreement, and upon the terms therein contained, all of the assets, properties, books and records of respondent corporation, excepting only (a) the capital stock of Pacific Mutual Life Insurance Company held by petitioner, and (b) the rights or claims, if any, which respondent corporation may have against any of the present or past officers, directors, or employees, as such, of respondent corporation, or against any other person, firm, or corporation, by reason of or in connection with wrongful or illegal acts or omissions, if any, of any of said past or present officers, directors, or

4165 employees, including rights or claims on any fidelity or surety bond or bonds given to or in favor of respondent corporation to secure the faithful performance by any of its said officers, directors, or employees of any of their duties as such.

15. That the Insurance Commissioner of the State of California, as conservator of respondent corporation, or, if he should hereafter be appointed liquidator of said corporation, as such 4166 liquidator, be and he is hereby authorized, without further order of this court, fully and faithfully to perform, carry out and discharge each and all of the obligations, terms, conditions and covenants on his part required to be performed under the terms of said rehabilitation and reinsurance agreement; and, either with or without further order of this court, to make, do, execute and deliver any and all such further or other 4167 acts, deeds and things by him deemed reasonably necessary or desirable to effectuate the intents and purposes of said rehabilitation and reinsurance agreement, and to assure and to confirm to Pacific Mutual Life Insurance Company, or its successors, all and singular the properties hereinbefore directed to be conveyed and released to said corporation, and to enable said corporation from and after the date hereof to conduct and continue to conduct a life and disability insurance business, as contemplated by said agreement.

4168 16. That this court, without relinquishing by these specific provisions any jurisdiction by it retained as a matter of law, do, and it does hereby, specifically retain and reserve jurisdiction of the within proceedings for the purpose of authorizing or approving any act of the Insurance Commissioner of the State of California done or to be done pursuant to or in accordance with this order, and for the purpose of making or entering, upon application of the Insurance Commissioner
4169 of the State of California or of Pacific Mutual Life Insurance Company, any order, decree, judgment, or ruling required, permitted, or requested to be done, made, or entered in connection with or pursuant to the terms of said agreement, or for the effectuation of the purposes thereof.

17. That in respect of all federal taxes finally determined to be due from The Pacific Mutual Life Insurance Company of California, the
4170 United States shall have the same legal right of priority and preference with respect to the payment of such taxes out of the assets of Pacific Mutual Life Insurance Company as it had against the assets of The Pacific Mutual Life Insurance Company of California had these proceedings not intervened; and that so much of said rehabilitation and reinsurance agreement as relates (a) to the foregoing priority and preference of the United States, (b) to the agreement of Pacific Mutual Life Insurance Company that

4171 the United States shall have the same remedies
against it and its assets with regard to the collec-
tion of said taxes as the United States had
against The Pacific Mutual Life Insurance Com-
pany of California; that no provision of said
agreement shall be construed as limiting the op-
eration of said provisions in respect of said
taxes; that the assets of The Pacific Mutual Life
Insurance Company of California be not so
valued nor the amount of the reserves so rede-
4172 termined as to affect prejudicially the rights or
remedies of the United States, and (c) to the
agreement of all parties to said rehabilitation and
reinsurance agreement that in consideration of
the forbearance on the part of the United States
at this time to enforce payment of its taxes, the
right of the United States to enforce the provi-
sions of said agreement shall be as full and com-
plete as if the United States were named as a
party thereto, be and the same is hereby, specif-
4173 ically ratified, confirmed and approved. Sub-
paragraph (b) of paragraph 15 of Exhibit "A"
attached hereto is hereby referred to, embodied
herein, and made a part hereof, as fully as if
here set forth in full.

18. That Pacific Mutual Life Insurance Com-
pany be and it is hereby authorized forthwith,
and without the necessity of any further order
or authorization of this court, to conduct, and
continue to conduct, the business of life and disa-
bility insurance as permitted by its articles of

4174 incorporation and by the laws of the state of California, including the assumption or reinsurance, to the extent provided in said rehabilitation and reinsurance agreement, of policies of insurance made or written by respondent corporation, and including the execution of new policies of insurance, and also including the doing of any and all other acts and things by it deemed reasonably necessary or desirable in connection with 4175 the conduct and transaction of such business.

19. That petitioner and said Pacific Mutual Life Insurance Company be and they are authorized to do any and all things necessary, desirable, or proper to carry out the terms of said rehabilitation and reinsurance agreement, or to effectuate the purposes thereof, in the state of California or elsewhere.

4176 20. That respondent corporation, its officers, directors, stockholders, agents and employees be and they are hereby directed, at any and all times and from time to time, to cooperate with and assist petitioner and said Pacific Mutual Life Insurance Company in the consummation and effectuation of said rehabilitation and reinsurance agreement and the purposes thereof, by the execution of such documents of transfer or conveyance, or otherwise, and by the doing of such acts in connection with said agreement or in connec-

4177 tion with any of the assets heretofore belonging to respondent corporation, or assets into which the same, or any of the same, may have been or may hereafter be converted, as Pacific Mutual Life Insurance Company may hereafter reasonably request or require for the purpose of effectuating the intents and purposes of this agreement or of this order; and that any and all injunctions and restraining orders heretofore entered herein
4178 are hereby modified to such extent as may be necessary to permit compliance with this order.

21. That Pacific Mutual Life Insurance Company shall, upon the production of an instrument of conveyance from petitioner, or a certified copy thereof, be let into the possession of any and all property conveyed, assigned, or transferred pursuant thereto, and shall thereafter hold, possess and enjoy such property, and each and every part
4179 and parcel thereof, free from any charge or claim of petitioner, or of respondent corporation, or of any of its policyholders, creditors, or stockholders, or of any other person or persons interested in respondent corporation, its properties or estate, or of any person claiming by, through, or under them, or any of them, except insofar as said property may, prior to the date of such conveyance, have been subject to any lien, charge,

4180 or incumbrance, legal, or equitable, superior to the title of petitioner and of respondent corporation; provided, however, that nothing herein contained shall be deemed to affect, minimize, or interfere with any right or rights conferred under, growing out of, or assured by said rehabilitation and reinsurance agreement.

22. That all persons, firms and corporations be and they are hereby forever barred and en-
4181 joined from making hereafter any complaint in respect of the said rehabilitation and reinsurance agreement, or any provision or provisions thereof, except as in said agreement specifically permitted or by appeal from this order; and the prosecution by any person, firm, or corporation of any proceeding or proceedings of whatsoever kind or nature, for the purpose of attacking this order, or any conveyance or transfer made pursuant hereto (other than as permitted by said
4182 rehabilitation and reinsurance agreement or by appeal from this order), or seeking to attach any liability of or on account of respondent corporation to Pacific Mutual Life Insurance Company (except as and to the extent the same may be assumed under the terms of said agreement), or to its properties or assets, or any of its properties or assets (except as and to the extent such lia-

4183 bility was prior to the date hereof secured by lien or charge upon such property or assets superior to the title of petitioner and of respondent corporation), be and it is hereby forever enjoined.

23. That any and all acts, things, or transactions performed, done, or entered into by petitioner in the performance of and within the intent and meaning of the direction of this court in the order made and entered herein on August 4184 11, 1936, directing petitioner to conduct, manage, transact and operate the business and affairs of The Pacific Mutual Life Insurance Company of California as a going insurance business, and to do any and all things petitioner might deem necessary and appropriate for that purpose, be and the same are hereby ratified, confirmed and approved.

4185 24. That that certain order permitting the performance of acts and the making of payments necessary to conserve and protect assets and to prevent the waste thereof made and entered herein by this court on August 17, 1936, be and the same is hereby ratified, confirmed and approved.

Dated: December 4th, 1936.

HENRY M. WILLIS,
Judge.

4186

EXHIBIT "A"

REHABILITATION AND REINSURANCE AGREEMENT

This Agreement, made and entered into as of the 22nd day of July, 1936, between Pacific Mutual Life Insurance Company, a California corporation, and Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, as conservator of The Pacific Mutual Life Insurance Company of California, a California corporation,

4187

Witnesseth:

That for and in consideration of the covenants and agreements hereinafter contained, the parties hereto agree as follows:

Definitions

(1) "Commissioner" shall mean Samuel L. Carpenter, Jr., in his capacity as Insurance Commissioner of the State of California, or his successors in office as such Commissioner.

4188

"Conservator" shall mean Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, in his capacity as Conservator of The Pacific Mutual Life Insurance Company of California, or his successors in office as such Conservator.

"Old Company" shall mean The Pacific Mutual Life Insurance Company of California.

4189 "New Company" shall mean Pacific Mutual Life Insurance Company.

"The Court" shall mean the Superior Court of the State of California, in and for the County of Los Angeles.

"Non-Can Policies" shall mean those policies of the Old Company usually known as its "Non-Cancellable Income Policies" including the Aggregate form thereof.

4190 "States" when referred to a governmental subdivision shall be deemed to include Territories and the District of Columbia.

"Properties of the Old Company" shall mean all books, records, property, real and personal, tangible and intangible, and all other assets of every kind, character, and description whatsoever, and wheresoever situated, owned by the Old Company at the time of the appointment of the Conservator which shall not have been applied
4191 by him against his subscription for stock of the New Company or disposed of by him in the due course of his administration as Conservator, plus all property acquired by the Conservator and the income therefrom collected by him, except (a) the stock of the New Company held by him, and (b) rights or claims, if any, of whatsoever nature which the Old Company may have against any of the present or past officers, directors, or employees, as such, of the Old Company, or against any other person, firm, or corporation, by reason

4192 of or in connection with wrongful or illegal acts or omissions, if any, of any of the past or present officers, directors, or employees of the Old Company, including rights or claims on any fidelity or surety bond or bonds given to or in favor of the Old Company to secure the faithful performance by any of its officers, directors, or employees of any of their duties as such.

“Effective Date of this Agreement” shall mean July 22, 1936, at the hour of one o'clock P. M.

4193 Pacific Standard Time.

“Liquidator” shall mean any person hereafter appointed Liquidator of the Old Company in the proceeding now pending in the Court entitled “Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California vs. The Pacific Mutual Life Insurance Company of California,” and bearing number 404673 in the records of the Court; and any person succeeding to the office of such Liquidator.

4194

Transfer of Assets

(2) The Conservator agrees, by appropriate instrument of conveyance, to sell, assign, convey, release, transfer, set over, and deliver, to the New Company, the properties of the Old Company; and to execute any and all further documents or instruments as may be reasonably necessary to effectuate and confirm the title of the New Company thereto.

4195 The Conservator shall not be required to make manual delivery of any cash or securities deposited by the Old Company with any governmental authority as a condition to the conduct of its business, nor to make manual delivery of any premiums or other assets which are in the possession of receivers of the Old Company or its assets or business, or in the possession of other governmental authorities, in states other than California; but in connection with receivership
4196 or other proceedings in such other states, the Conservator shall do any and all things proper for him to do to bring about and accomplish the delivery and transfer of such premiums or other assets to the New Company.

The Conservator shall transfer and deliver to the New Company the full amount of all premiums on any policy reinsured and assumed hereunder which have been paid to the Conservator on or after the effective date of this agreement,
4197 and the New Company shall credit the holder of such policy with the payment of such premiums accordingly, subject to repayment as hereinafter provided in the event the holder of such policy shall elect not to accept such reinsurance and assumption by the New Company. If any policy holder of the Old Company whose policy may be reinsured or assumed hereunder shall have paid his premium thereon to the Conservator subsequent to the effective date of this agreement, and shall thereafter elect to reject rein-

4198 surance and assumption of his such policy hereunder; and if the Court shall direct the Conservator or Liquidator to return said premium (or the net premium or premiums less charge for insurance service or collection charge or otherwise); then and in those events the New Company shall repay to the Conservator or Liquidator, on demand, said premium, or so much thereof as the Court may have ordered returned by the Conservator or Liquidator, as aforesaid.

4199 Pursuant to the provisions of Section 1043 of the Insurance Code of the State of California it is agreed that subsequent to the effective date of this agreement, and for such period of time as the Commissioner may determine, no investment or reinvestment of the assets of the Old Company shall be made without first obtaining the written approval of the Commissioner.

Reinsurance and Assumption of Policies Other Than Non-Can Policies.

4200

(3) The New Company does hereby reinsure and assume, as of the effective date of this agreement, with the exception hereinafter provided, the liability of the Old Company and of the Conservator under all life, endowment, annuity and term policies and contracts of insurance, and all other policies and contracts of insurance, including, without limiting the same to, health and accident benefits, waiver of premium disability benefits, permanent and total disability

- 4201 benefits, home office employees disability benefit plan, and all supplementary contracts, annuity contracts, and all reinsurance contracts; issued or assumed by the Old Company and outstanding and in force on the books and records of the Old Company at the effective date of this agreement, or issued by the Conservator in his name as Conservator, in the name of the Old Company, or in the name of the New Company, subject, however, to any and all defenses, offsets,
- 4202 counter-claims, cross-complaints, and rescission rights against said policies or contracts or against any claims and actions thereon, which would have been available to the Old Company or the Conservator as aforesaid had this agreement not been made; provided, however, that no outstanding Non-Can Policies are reinsured or assumed under this paragraph, and all of such policies are hereby expressly excepted from the obligations of the New Company under this
- 4203 paragraph.

Reinstatement of Lapsed Policies

(4) The New Company will reinstate any policies heretofore issued, assumed, or reinsured by the Old Company, which are not excepted from the obligations of the New Company contained in the foregoing paragraph and which at the effective date of this agreement, by their terms, were entitled to reinstatement, provided that all requirements necessary to procure a re-

4204 instatement of said policies under their terms are fulfilled to the satisfaction of the New Company.

The New Company will also reinstate, during the lifetime of the insured and provided the insured is not in such condition as to be eligible for benefits under the policy, without evidence of insurability, any of the policies reinsured and assumed under Paragraph (3) hereof, which have lapsed since the effective date of this agree-
4205 ment, upon written application therefor by the insured and the payment of all premiums in arrears, if such application is made and premiums are paid within seventy-five (75) days after the entry of the order of the Court approving this agreement. Upon the reinstatement of such lapsed policy it shall, for all purposes, be treated (but only from and after the date of reinstatement) the same as if it had been in force on the effective date of this agreement and be subject
4206 to the terms and conditions of this agreement.

Payment of Policy Claims Other Than Claims
on Non-Can Policies.

(5) The New Company will pay in full, in accordance with the terms and conditions of all policies including annuities under which claims shall have been or may be made, and whether or not the claims arose or matured prior or subsequent to the effective date of this agreement, all policy claims against the Old Company (ex-

4207 cept claims on Non-Can Policies) including,
without limiting the same to, claims for death
benefits, matured endowments, annuity pay-
ments, permanent total disability and premium
waiver benefits, accident and sickness benefits,
payments under policy settlement agreements,
policy dividends left at interest with the Old
Company prior to the effective date of this
agreement, and payments under all other ma-
4208 tured contracts under which the proceeds of poli-
cies and contracts were left with the Old Com-
pany prior to the effective date of this agree-
ment; and the New Company will assume the
liabilities of the Old Company with respect to
deposits, moneys left with the Old Company at
interest, overpayments, duplicate payments, or
advance payments of premiums, and return of
premiums arising from cancellations prior to
July 22, 1936; all subject, however, to any and
all defenses, offsets, counter-claims, cross-com-
4209 plaints, and rescission rights against any such
claim or claims which would have been avail-
able to the Old Company had this agreement not
been made.

Participating Department

(6) The New Company agrees to establish
a separate department for Participating Life In-
surance, and to allocate thereto specifically or in
tenancy in common that portion of the assets
conveyed to it by the Conservator (other than

4210 the Three Million Dollars (\$3,000,000.) transferred to the New Company for its capital stock) in the ratio in which assets appearing on the books of the Life Department of the Old Company were credited to the Participating Life Department of the Old Company on its books as of July 22, 1936, subject to such changes as may have been made therein in the ordinary course of the operations of the business of the Old Company by the Conservator, including the

4211 writing of the new participating life insurance by the New Company, and except assets of the book value of One Million, Seven Hundred Ninety-Two Thousand, One Hundred Eighteen Dollars and Ninety-seven Cents (\$1,792,118.97) transferred by the Conservator to the Accident and Health Department.

The said Three Million Dollars (\$3,000,000.) transferred to the New Company for its capital stock constitutes and shall constitute the capital

4212 and paid-in surplus of the New Company; and neither the Participating Department nor the holders, present or future, of participating policies shall have any right, claim, or interest therein prior to other Departments or their policy holders. The said assets transferred to the Accident and Health Department are and shall be the property of the said Department free from any claim of the Participating Department, or the holders, present or future, of participating policies.

- 4213 It is hereby agreed by the New Company, and all persons accepting reinsurance hereunder do by such acceptance agree, that the assets of the Participating Department, and its business, and the receipts in respect of said business shall, subject to the limitations hereinafter contained, be appropriated and held as absolutely for the benefit of and to the security of the policies and policy holders of that Department as though they belonged to a mutual insurance company carrying on no other business; and, to the extent of
- 4214 the reserves from time to time required on the policies and policy liabilities of said Department, in priority to the claims of all other creditors, past, present, and future, of said Department.

The Board of Directors of the New Company shall, from time to time, and at least annually, transfer from the Participating Department to the funds of the New Company available for its general corporate purposes, such sums as it

4215 may deem available, if any, but in no event exceeding in the aggregate ten percent. (10%) of the net profits (before dividends, and without charging thereto cost of acquisition of new business) then accrued on policies of the Old Company reinsured hereunder earned subsequent to the effective date of this agreement (whether arising from mortality savings, investment income, expense savings, or otherwise, and after taking into consideration gains or losses on the sale or other disposition of assets, and such rea-

4216 sonable adjustment in the value of any assets, or reserves for anticipated losses thereon, or otherwise, as the Board of Directors of the New Company may from time to time establish, subject only to readjustment upon the order of the Commissioner made in the course of or as a result of any examination of the New Company). Any portions of such ten percent. (10%) not so transferred at any time shall be cumulative, and shall be transferred from time to time thereafter, from profits, and subject to limitations, as aforesaid. Any statute of limitations which might apply to bar the right to require such transfer is hereby waived.

Any surplus from time to time existing in said Department (whether arising from mortality savings, investment income, expense savings, or otherwise, and after taking into consideration gains or losses on the sale or other disposition of assets, and such reasonable adjustments in the value of any assets, or reserves for anticipated losses thereon, or otherwise, as the Board of Directors of the New Company may from time to time establish, subject only to readjustment upon the order of the Commissioner made in the course of or as a result of any examination of the New Company), may be used only for the following purposes:

(a) The payment of policy dividends to policy holders in accordance with the terms of their

4219 policies and in such amounts as the Board of Directors of the New Company may from time to time consider proper and advisable, taking into consideration the amount of earnings and other relevant data.

(b) For the payment of any of the costs and expenses of operation of said Department, including the acquisition and carrying of new business written by said Department in such amounts as the Board of Directors of the New

4220 Company may from time to time deem reasonably necessary or desirable.

(c) Necessary working capital may be supplied to said Department from time to time from any moneys available for general corporate purposes; and the Board of Directors of the New Company shall, when in their discretion it shall appear practicable, in subordination to the rights of the policy holders of said Department, and from surpluses accumulated in said Department

4221 after the payment of reasonable and appropriate dividends to the policy holders thereof, as provided in subparagraph (a) of this paragraph 6, restore the amount of the working capital so supplied, together with interest thereon at the average rate of interest earned by the New Company during the period, to the sources from which it came.

(d) For the payment into funds of the New Company available for its general corporate pur-

4222 poses of a portion (not including ten percent. (10%) of the net earnings of the participating policies of the Old Company reinsured hereunder, as hereinbefore provided. In computing dividends payable to participating policy holders, any amounts paid under this subparagraph shall be charged against said policies reinsured and no part thereof shall be charged against participating policies issued by the New Company.

4223 (e) Any remaining portion of said surplus shall be kept separate and distinct from the funds of all other departments; and shall be held as absolutely for the security of and the benefit of the policy holders of the Participating Department as though it belonged to a mutual company carrying on no other business.

Non-Participating Department

4224 (7) The New Company further agrees to establish a separate department for its Non-Participating Life Insurance, and to allocate thereto specifically or in tenancy in common that portion of the assets conveyed to it by the Conservator in the ratio in which assets appearing on the books of the Life Department were credited to the Non-Participating Department of the Old Company on its books as of July 22, 1936, subject to such changes as may have been made therein in the ordinary course of the operation

4225 of the business of the Old Company by the Conservator, including the writing of new non-participating life insurance by the New Company.

It is hereby agreed by the New Company, and all persons accepting reinsurance hereunder do by such acceptance agree, that the assets from time to time held in said Non-Participating Department shall, to the extent of the reserves from time to time required on the policies and policy liabilities of said Department, be appropriated, and held as absolutely for the benefit of and to the security of the policies and policy holders of said Department as though they belonged to a company carrying on no other business, and in priority to the claims of all other policy holders or creditors, past, present, or future, of the New Company.

4227 Any surplus from time to time existing in said Non-Participating Department (whether arising from mortality savings, investment income, expense savings, or otherwise, and after taking into consideration gains or losses on the sale or other disposition of assets and such reasonable adjustments in the value of any assets, or reserves for anticipated losses thereon, or otherwise, as the Board of Directors of the New Company may from time to time establish, subject only to readjustment upon the order of the Commissioner made in the course of or as a re-

4228 sult, of any examination of the New Company) may from time to time be used for the general corporate purposes of the New Company subject to any express limitations herein contained.

Accident and Health Department

(8) The New Company further agrees to establish a separate department for its Accident and Health Insurance (including Non-Can Policies), and to allocate thereto the assets conveyed 4229 to it by the Conservator which had been credited to the Accident and Health Department of the Old Company on its books as of July 22, 1936, and those assets of the book value of One Million, Seven Hundred Ninety-two Thousand, One Hundred Eighteen and 97/100 Dollars (\$1,792,118.97) heretofore transferred by the Conservator to the Accident and Health 4230 Department, subject to such changes as may have been made therein in the ordinary course of the operation of the business of the Old Company by the Conservator, including the writing of new accident and health insurance by the New Company.

It is hereby agreed by the New Company, and all persons accepting reinsurance hereunder do by such acceptance agree, that the assets

4231 from time to time held in said Department shall, to the extent of the reserves from time to time required on the policies and policy claim liabilities of said Department, be appropriated for the benefit of and to the security of the policies and policy claim liabilities hereof in priority to the claims of all other policy holders or creditors, past, present, or future, of the New Company.

4232 Any surplus from time to time existing in said Department (after taking into consideration gains or losses on the sale or other disposition of assets and such reasonable adjustments in the value of any assets, or reserves for anticipated losses thereon or otherwise, as the Board of Directors of the New Company may from time to time establish, subject only to readjustment upon the order of the Commissioner made in the course of or as a result of any examination
4233 of the New Company) may from time to time be used for the general corporate purposes of the New Company subject to any express limitations herein contained.

Inter-Departmental Transactions

(9) Neither anything in this agreement contained, nor the separating of the business of the New Company into Departments, as aforesaid,

- 4234 shall be deemed to prevent the apportionment among Departments of their fair and equitable shares of expenses; nor the exchange, upon a fair and equitable basis, of assets between Departments; nor reinsurance between Departments in the ordinary course of business and at customary reinsurance rates. Any determination by the Board of Directors of the New Company with respect to any such apportionment or
- 4235 exchange shall be final and conclusive upon all persons interested, subject only to adjustment upon order of the Commissioner made in the course of or as a result of any examination of the New Company.

Reinsurance and Assumption of Non-Can Policies.

- (10) The New Company does hereby re-
- 4236 sure and assume, as of the effective date of this agreement, the liability of the Old Company or of the Conservator, whether incurred in his name as Conservator, in the name of the Old Company, or in the name of the New Company under all Non-Can Policies issued by the Old Company and outstanding and in force on the books and records of the Old Company at the effective date of this agreement, subject, however,

4237 to the terms, conditions, and limitations, and only to the extent, hereinafter specifically provided; and subject, further to any and all defenses, offsets, counterclaims, cross-complaints, and rescission rights against such policies or any claims and actions thereon which would have been available to the Old Company or to the Conservator as aforesaid had this agreement not been made.

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Terms, Conditions, Limitations, and Extent of Reinsurance and Assumption of Non-Can Policies.

(11) The New Company does not assume any liability for monthly benefits on Non-Can Policies reinsured hereunder unless the disability commenced prior to the effective date of this agreement and notice of claim was filed in accordance with the terms of the policy, and in no event later than twenty (20) days after the effective date of this agreement, except to the extent of the following percentages of the monthly disability benefits originally provided under said policies according to the following premium classes respectively (but subject to restoration of monthly benefits as hereinafter provided):

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	Prem. Class.	Issued Under Rate Books	Policy Forms	Issued Under Policy Numbers	Percentage of Original Monthly Benefit Assumed By New Company
	1918	A1445-A1445Z A1445Y-A1445X A1445W	A231 to A288 inc.	2658601 to 2698150 4600501 to 4628000 4711101 to 4712000 4730901 to 4731100	20%
4241	1921	A1687-A1687Z A1687Y-A1687X A1687W	A291 to A294 inc. A365-A366	4628001 to 4700000	35%
	1926	A1958-A1958Z A1958Y	A382-A383 A386-A387 A387Z	5500001 to 5600000	45%
	1929	A2293	A382-A383 A386-A387 A387Z	5600001 to 5620000	55%
	1931	A2367	A753 to A756 inc. A763-A764	5620001 to 5635000	65%
4242	1932	A2432-A2432Z A2499 A2499	A775 to A780 inc. Aggregate A1216 to A1221 inc.	5635001 to 6000000 6500001 to 7000000	90% 90%
	1935	A2567	Aggregate A1226 to A1229 inc.	7000001 to 7100000	90%

NOTE: All of the above mentioned Rate Books are Rate Books issued by the Old Company and copies are on file at the office of the New Company at 523 West Sixth Street, Los Angeles, California, and in the offices of the Insurance Commissioners or similar public officials of each state in which the Old Company has been transacting insurance business, except in states where such filing is not required by law.

4243 Notwithstanding the foregoing limitation on the obligation of the New Company to make monthly disability payments at such rates on such policies, to be entitled to the reinsurance and assumption of his Non-Can Policy by the New Company as aforesaid, the policy holder shall be obligated to continue to make premium payments as originally provided in his policy.

Reinstatement of Lapsed Non-Can Policies

4244 (12) The provisions of paragraph 4 of this agreement with respect to reinstatement of lapsed policies other than Non-Can Policies shall apply to Non-Can Policies, subject to the terms, conditions and limitations contained in paragraphs 10 and 11 hereof.

Payment of Claims on Non-Can Policies in Respect of Disabilities Existing Prior to Effective Date of this Agreement

4245 (13) The New Company shall be obligated to pay all disability benefits under Non-Can Policies for disabilities commencing prior to the effective date of this agreement with respect to which claims or notices of claims were duly filed in accordance with the terms of such policies, and in any event not later than twenty (20) days after the effective date of this agreement, and all payments under settlement agreements made by the Old Company with claimants under such

4246 policies, without any deduction or limitation whatsoever, but subject to all of the terms and provisions of such Non-Can Policies, and subject to the terms of any such settlement agreements; and subject, further, to any and all defenses, offsets, counter-claims, cross-complaints, and rescission rights against any such claim or claims, which would have been available to the Old Company or to the Conservator as aforesaid had this agreement not been made.

4247 Restoration of Benefits under Non-Can Policies


(14) The Board of Directors of the New Company shall from time to time transfer from the funds of the New Company available for its general corporate purposes to a special fund for the restoration of benefits under Non-Can Policies in such manner as the Board of Directors with the approval of the Commissioner may from time to time determine, such amounts as said Board of Directors in its discretion shall determine to be not reasonably required for the reasonable, proper and profitable conduct of the operations of the New Company as a going concern. At time of any examination of the New Company by the Commissioner, the Commissioner may require the transfer of additional funds to such special fund, to the extent such additional funds available for general corporate purposes are in his opinion available without interfering with the proper and profitable conduct of

4249 the business of the New Company as a going concern.

The moneys and other assets from time to time held in such special fund shall be used by the New Company, with the approval of the Commissioner, and in such manner as he may from time to time require, for the purpose of paying additional disability benefits to holders of Non-Can Policies then, thereafter, or theretofore entitled thereto, in excess of the amounts
4250 required to be paid under paragraph 11 hereof, to the end that the benefits originally provided in said Non-Can Policies as written may eventually be fully paid, including eventual full payment of benefits becoming due prior to the time of such restoration, with interest on deferred restoration payments of such benefits at the rate of three and one-half percent. ($3\frac{1}{2}\%$) per annum. The extent and manner of the restoration so required or approved by the Commissioner
4251 shall be binding upon all holders of Non-Can Policies, and all other persons interested therein.

The New Company may at any time, with the approval of the Commissioner, transfer all of such special fund to the reserves for Non-Can Policies, and, with the approval of the Commissioner, may fully assume and reinsure all Non-Can Policies hereby partially and conditionally reinsured, to the full amount thereof and in accordance with the terms thereof as written; and

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4252 if the Commissioner at the time of any examination of the New Company shall determine that in his opinion the amount of such special fund is sufficient to permit the establishment therefrom of adequate reserves for the full reinsurance of such Non-Can Policies, he may require such transfer and full reinsurance.

Upon such full reinsurance with the approval of or in accordance with the requirements of the Commissioner, the benefits on Non-Can Policies shall be deemed fully restored.

4253 After the benefits on Non-Can Policies shall have been fully restored, the said special fund shall be abolished, and any assets remaining therein at that time shall be available for the general corporate purposes of the New Company.

4254 The New Company shall be under no obligation to pay or restore the full benefits under Non-Can policies as originally provided therein, except in the manner and to the extent hereinbefore described; provided, that if title to all or substantially all of the assets of the Accident and Health Department of the New Company shall hereafter be transferred, by voluntary act (other than by statutory merger or consolidation) or by operation of law, to any person who does not in connection with such transfer assume all of the obligations of the New Company to holders of Non-Can Policies, including obli-

4255 gations to restore the benefits thereunder in substantially the manner in this paragraph 14 provided, then and in that event the New Company will be deemed to have fully reinsured and assumed all of the Non-Can Policies, including the obligation to pay in full all installments of the disability benefits originally provided to persons theretofore entitled thereto.

Assumption of Claims against Old Company ○

4256 (15) The New Company hereby assumes and agrees to pay in full:

(a) All costs and expenses of the Conservator, including attorney's fees fixed and approved as required by law.

4257 (b) All Federal taxes finally determined to be due from the Old Company. The United States shall have the same legal right of priority and preference with respect to the payment of such taxes out of the assets of the New Company as it had against the assets of the Old Company had these proceedings not intervened, and the New Company agrees that the United States shall have the same remedies against it and its assets with regard to the collection of such taxes as the United States had against the Old Company. No provision of this agreement shall be construed as limiting the operation of the provisions of this subparagraph; nor shall the assets of the Old Company be so valued or the amount

4258 of the reserves so redetermined as to prejudicially affect the rights or remedies of the United States. In consideration of the forbearance on the part of the United States at this time to enforce payment of its taxes, all parties hereto agree that the right of the United States to enforce the provisions of the agreement shall be as full and complete as if the United States were named a party hereto.

It is agreed that the foregoing subparagraph 4259 (b) shall be embodied in and become a part of the Court's decree of confirmation.

(c) Taxes legally due from the Old Company to any State of the United States, to any County, or to any political subdivision.

(d) Wages, salaries, and pensions legally due to persons employed by the Old Company for services rendered, and current bills and expenses, other than insurance liabilities, in connection with the operation of the business of the Old Company, incurred prior to July 22, 1936, and remaining unpaid, subject of course to any defenses the Old Company may have had thereto. 4260

Assumption of Claims against Conservator

(16) The New Company agrees to indemnify the Conservator against any and all claims and liabilities incurred by him in his capacity as Conservator in connection with the operation of the business of the Old Company,

4261 whether in his name as Conservator, in the name of the Old Company, or in the name of the New Company.

Assumption of Claims against Liquidator

(17) In the event the Commissioner shall hereafter be appointed Liquidator of the Old Company, the New Company agrees to assume, and does hereby assume and agree to pay, all costs and expenses of such Liquidator, including attorney's fees, fixed and approved as provided by law. The New Company further agrees to pay, and does hereby agree to pay to the Liquidator for payment to claimants an amount equal to the sum of all claims against the Old Company filed with the Liquidator and finally allowed; provided, however, that the New Company shall not be required to make any payment or payments on account of any claims so filed with the Liquidator except to the extent and in 4262 the manner hereinafter provided (but the New Company, with the consent of the Commissioner, may waive the foregoing limitation and anticipate any such payments):

(a) The New Company will, as of the effective date of this agreement, with the approval of or in accordance with the requirements of the Commissioner, establish reserves against all policies and policy liabilities of the Old Company subject to assumption or reinsurance hereunder

4264 (but, with respect to Non-Can Policies, only to the extent described in paragraphs 11 and 13 hereof). If any policy holders or policy claimants shall elect to reject assumption and reinsurance hereunder, the New Company agrees to pay to the Liquidator, immediately after the time for filing claim with said Liquidator shall have expired, an amount equal to the reserves so originally established against their policies or claims.

4265 (b) Whenever, pursuant to the provisions of paragraph (14) hereof, any sums are transferred to the special fund for the restoration of benefits under Non-Can Policies, the New Company shall pay to the Liquidator a further sum of money bearing the same ratio to the moneys so transferred as the Non-Can Policies (evaluated as hereinafter provided) whose holders have rejected reinsurance hereunder and upon which claims have been filed in the liquidation proceedings as aforesaid, bears to the Non-Can Policies (evaluated as hereinafter provided) whose holders have accepted reinsurance hereunder.

4266 Until such time as the measure of the claims, to the allowance of which holders of Non-Can Policies who file their claim in liquidation proceedings under the laws of the State of California are entitled, shall have been determined to the satisfaction of the Liquidator and he shall

4267 so notify the New Company in writing, Non-Can Policies shall, for the purpose of this subparagraph, be evaluated on the basis of the percentage established by paragraph 11 hereof of their monthly benefit originally provided, whether or not the holders thereof have accepted reinsurance hereunder.

4268 When the measure of the claim to the allowance of which holders of such policies are entitled, as aforesaid, shall have been determined to the satisfaction of the Liquidator, and he shall so notify the New Company in writing, Non-Can Policies shall thereafter be evaluated for the purposes of this subparagraph, on the basis of allowable claim, whether or not the holders thereof have accepted reinsurance thereunder; but subject to readjustment as hereinafter provided in case of any final determination by the courts of California of any other measure.

4269 In the event payments have been made under any evaluation which is later altered as hereinbefore provided, a recomputation shall be made; and if as a result thereof it appears that there has been an overpayment to the Liquidator, he shall immediately refund to the New Company the amount of such overpayment; but if as a result of such recomputation it shall appear that there has been an underpayment to the Liquidator, the New Company shall adjust such underpayment solely out of funds available for its

4270 general corporate purpose, in the manner and upon the terms provided in paragraph 14 hereof for the creation of the special fund where referred to, but in priority to the claims of such fund.

(c) Any remaining amount necessary to pay and discharge the claims as aforesaid shall be paid at the time benefits under the Non-Can Policies are fully restored.

4271 (d) The aggregate of the payments to be made in subparagraphs (a), (b), and (c) hereof, shall not exceed the full amount of claims finally allowed in the Liquidation proceedings as aforesaid. Any moneys paid hereunder and remaining in the hands of the Liquidator after all claims filed with him and finally allowed have been paid, shall be by him returned to the New Company.

4272 (18) Any payments made by the New Company to the Liquidator under the provisions of paragraph 17 hereof may be made in cash or in securities or other assets satisfactory to the Liquidator taken at a valuation satisfactory to him. If payment is made otherwise than in cash, the Liquidator may, at any time, return any of such securities or other assets to the New Company at the valuation at which the same were taken, and the New Company shall substitute therefor cash or other securities or assets as aforesaid.

4273 Proceeds of Assets Held By Conservator or Liquidator

(19) The conservator, or, if the Commissioner is hereafter appointed Liquidator of the Old Company, such Liquidator, shall proceed in such manner and at such time as he deems proper, subject to the provisions of paragraph 20 hereof, to realize upon the assets still held by him as Conservator or as such Liquidator.

4274 In consideration of the various covenants of the New Company herein contained, and for the purpose of protecting holders of Non-Can Policies and of assuring an equitable division of the assets in liquidation among all policy holders and creditors of the Old Company, the Conservator agrees, for himself and for the Liquidator as his successor in title, that the proceeds of any of such assets (other than assets received under the provisions of paragraph (17) hereof) which may hereafter be received by him (or by the Liquidator as his successor in title) shall be used in the manner and only in the manner hereinafter in this paragraph 19 described; and a lien or charge is hereby established upon said proceeds accordingly:

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(a) Said proceeds and any part thereof may be used by the Conservator or Liquidator for the payment of any of his costs or expenses of administration, including attorney's fees fixed and approved as provided by law; and any claims

4276 having preference in the liquidation proceedings by the laws of the United States or by the laws of the State of California; and thereupon the obligation of the New Company to pay such costs, expenses, or claims shall be released pro tanto.

(b) In the event benefits under Non-Can Policies shall not theretofore have been fully restored as provided in paragraph 14 hereof, a portion of the remaining proceeds (but not exceeding the amount required to provide complete restoration of the benefits under Non-Can Policies) in the ratio which exists between the Non-Can Policies (evaluated as provided in subparagraph (b) of paragraph 17 hereof) whose holders have accepted reinsurance hereunder, and all Non-Can Policies (evaluated as provided in subparagraph (b) of paragraph 17 hereof), whether their holders have accepted reinsurance, or have rejected reinsurance hereunder, and have filed claims in the liquidation proceedings, shall be paid to the New Company, and by it transferred to the special fund described in paragraph 14 hereof.

4278 In the event payments have been made hereunder under any temporary evaluation which is later altered as hereinbefore permitted, a recomputation shall be made; and if as a result thereof, it appears that there has been an underpayment from the Liquidator, he shall immediately adjust such underpayment from funds in

4279 his hands; but if as a result of such recomputation it shall appear that there has been an overpayment from the Liquidator, the New Company shall repay to the Liquidator from the special fund established pursuant to paragraph 14 hereof when and as there are sufficient moneys therein, (but in priority to the rights of holders of Non-Can Policies who have accepted reinsurance hereunder to restoration of their benefits) the amount
4280 of such overpayment.

(c) Any portion of such proceeds remaining after making the payments described in subparagraphs (a) and (b) hereof shall be used to pay and discharge claims filed with the Liquidator and finally allowed.

(d) Any portion of such proceeds remaining after making the payments described in subparagraphs (a), (b) and (c) hereof shall be paid to
4281 the New Company for the purposes of the special fund described in paragraph 14 hereof, to the extent the same may be required to provide full restoration of the benefits under Non-Can Policies.

(e) Any portion of such proceeds remaining after making the payments described in subparagraphs (a), (b), (c) and (d) hereof shall be disposed of by the Liquidator in the manner provided by law.

4282 Mutualization and Disposition of Stock
 of New Company

(20) Neither the Conservator, nor, if one be appointed, the Liquidator, of the Old Company, shall dispose of any of the stock of the New Company except as follows:

4283 (a) At any time between July 1, 1946, and January 1, 1948, and thereafter so long as the Conservator or a Liquidator of the Old Company may continue to hold any or all of said stock, ten percent (10%) of the holders of participating policies of life insurance entitled to vote at a policy holders' election on a proposal for voluntary mutualization of the New Company, whether those reinsured hereunder or those issued by the New Company (each policy holder for this purpose being regarded as one person regardless of the number of policies owned or amount of insurance held) may request the New
4284 Company to create an Appointing Committee as hereinafter provided to exercise the duties and functions hereinafter specified in respect of a proposed voluntary mutualization of the New Company, in accordance with the laws of the State of California in effect at the time of said request, or, if said laws then so permit, of any one or more departments thereof. Such request shall specify the department or departments of the New Company desired to be mutualized.

4285 Upon the receipt of such request the New Company shall create an Appointing Committee consisting of the then President of the Association of Life Insurance Presidents, the President of Leland Stanford Jr. University, and the Provost of the University of California at Los Angeles, or persons occupying similar positions if their or any of their titles shall have been changed. In the event any one or more of such persons shall refuse or be unable to act, the re-

4286 maining member or members shall fill the vacancy or vacancies thereby created by their appointment in writing of another person or persons of similar position and standing. If all of said persons refuse or are unable to act, the Court or any Judge thereof shall, on the application of the Commissioner, designate an Appointing Committee consisting of three (3) persons of similar position and standing. Said Appointing Committee, acting through not less than a ma-

4287 jority of its members, shall designate a Price Determination Committee of not less than three and not more than five (5) persons skilled in matters of insurance company valuation, which committee, acting through not less than a majority thereof, shall determine whether in their opinion the proposed voluntary mutualization of the New Company, or of the department or departments thereof specified in said request can then be practicably accomplished having due re-

4288 gard to the interests of all persons interested in the New Company. If it be determined that such mutualization is not then practicable, no further steps shall be taken in connection with a possible mutualization of the New Company under the provisions of this subparagraph until at least six months after the date of such determination. If in the opinion of a majority of the members of the committee such mutualization is then practicable, the committee shall determine 4289 the proper price to be paid upon such mutualization and appropriate terms of payments thereof; said determination shall not be made, however, prior to January 1, 1947.

If, at the date of the appointment of such committee the New Company shall have in force Participating Life Insurance written subsequent to the effective date of this agreement in an amount in excess of its Non-Participating Life Insurance written during the same period, one-half ($\frac{1}{2}$) of such excess shall, for the purpose 4290 of fixing the proper price to be paid (but for no other purpose) be deemed to be, and shall be valued as, Non-Participating Life Insurance. If at the time of such appointment, there shall have been transferred from the Participating Department in accordance with the provisions of subparagraph (d) of paragraph 6 hereof, less than ten percent. (10%) of the then accrued earnings described therein, or if there shall have been

4291 transferred to the Participating Department any working capital pursuant to the provisions of subparagraph (c) of said paragraph 6, any unpaid balance thereof shall, for the purpose of fixing the proper price to be paid (but for no other purpose) be deemed to be a debt then due, and matured. Said Committee shall in its report to the New Company include a plan of mutualization of the New Company, or of the department or departments thereof specified in

4292 said request of the policy holders: Such plan shall specify, in addition to any other relevant matters, the price to be paid, the terms of payment, and the persons by whom and the manner in which the right to vote the stock of the New Company is to be exercised pending complete payment of the purchase price. In this connection the said Committee, if it deem it advisable, may provide in the plan for the creation of a voting trust, designate the initial trustees, and

4293 make provision for the appointment of their successors. Unless the benefits under Non-Can Policies have theretofore been fully restored and claims against the Liquidator fully paid, such plan shall further provide that such mutualization shall not affect the provisions of paragraph 17 or of paragraph 14 hereof or the right of holders of Non-Can Policies to the restoration of benefits from the sources and in the manner therein provided.

4294 The New Company agrees that within sixty (60) days after the making of such report (unless said report shall be to the effect that mutualization is not then practicable) it will mail copies thereof to all of its policy holders entitled to vote upon such plan or plans of mutualization if submitted according to law. If within one hundred twenty (120) days after the mailing of such notice, ten percent. (10%) of the policy holders entitled to vote upon any such plan or plans

4295 (each policy holder being for this purpose regarded as one person regardless of the number of policies owned or amount of insurance held) shall request in writing the submission thereof, the New Company will promptly submit the same in accordance with the laws of the State of California then in effect. The Conservator for himself and for any successors in the ownership of said stock claiming under him in any manner other than through a sale of said stock pursuant

4296 to the provisions of subparagraph (d) hereof agrees to consent and hereby consents as the holder and owner of the stock of the New Company to such plan of mutualization. In the event said mutualization plan is adopted, the Conservator, or a Liquidator as aforesaid, shall dispose of such stock in accordance with such plan. The expenses of the foregoing proceedings including costs, fees, and expenses of the Price Determination Committee, shall be borne by the New Com-

4297 pany; and, unless the proposed plan of mutualization is consummated, shall be charged to the Participating Department thereof.

In the event the Price Determination Committee has been appointed as herein provided prior to January 1, 1948, said Committee shall have the power to extend the time within which mutualization may be effected hereunder for such period or periods of time as it may deem necessary for the orderly completion of mutualization proceedings as herein provided.

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(b) If at any time prior to the expiration of the option to mutualize a plan of merger, consolidation, reorganization or reinsurance of the New Company is presented to the New Company, or to the Conservator or Liquidator, which in the opinion of the Board of Directors of the New Company cannot be consummated without the elimination of the provisions for mutualization herein contained, the new Company may create an Appointing Committee in the same manner as though the proceeding were under subdivision (a) of this paragraph. Said committee, acting through not less than a majority of its members, shall designate a committee of not less than three nor more than five persons, skilled in matters of insurance company administration and management. The committee so designated shall, acting through not less than a

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4300 majority of its members, determine whether or not such plan of merger, consolidation, reorganization or reinsurance is practicable and desirable, having due regard to the interests of all persons interested in the New Company. If the committee determine that such plan is practical and desirable it shall determine a reasonable time which should be allowed for the consummation of the plan. Thereupon the New Company with the written approval of the Conservator or Liquidator,

4301 if then there be one, may submit to a vote of the policy holders (voting in the manner then prescribed by the laws of the State of California relating to voluntary mutualization) a proposal to suspend the mutualization provisions of this agreement for the time fixed by the committee, which proposal shall contain a brief description of the plan. If a majority of the policy holders so voting (but not less than ten percent. (10%) of those entitled to vote) vote in favor of the

4302 proposal, said provisions for mutualization shall be suspended for the time so specified and for the sole purpose of consummating the particular plan; and said plan may be consummated within said time free from said provisions and as though no such provisions had ever been contained in this agreement; but unless said plan be consummated within such time said provisions ipso facto shall become fully effective as though there had been no suspension thereof.

4303 The New Company shall, however, at least fifteen (15) days before any vote of policy holders is called under the provisions of this subparagraph, give written notice to each of its General Agents of the intention to call or take such vote. Such notice shall be deemed sufficiently given if and when it is deposited in the United States mails in a properly stamped container, addressed to such General Agent at his latest address appearing on the records of the New
4304 Company.

(c) At any time while the stock of the New Company is held by the Conservator or the Liquidator and has not been sold by him the Old Company shall have the right to pay to the Conservator or to the Liquidator the full amount then required by the New Company to complete the restoration of Non-Can benefits and also the amount required by the Conservator or Liquidator to complete the payment of all his claims and liabilities. In the event the benefits on Non-Can Policies shall have been fully restored from earnings of the New Company, contributions of the Old Company, or its shareholders, or otherwise, and all expenses of and claims against the Conservator or Liquidator of the Old Company have been fully paid, the Conservator or such Liquidator shall, upon order of the Court, distribute the stock then held by him in the manner provided by law; provided, however, that if such
4305

4306 distribution is made prior to the expiration of the option to mutualize granted in subparagraph (a) of this paragraph 20, the distributees and their successors in the ownership of said stock, shall remain bound, until the expiration of said option, to the aforesaid consent to any mutualization plan of the New Company proposed in accordance with the provisions of subparagraph (a) of this paragraph 20.

4307 The Conservator or Liquidator shall cause to be endorsed upon the certificates evidencing the ownership of such stock an appropriate legend giving notice of the said option to mutualize; and the New Company shall cause a similar legend to be endorsed upon all certificates into which the same may be transferred prior to the expiration of said option.

(d) In the event the Conservator or Liquidator shall at any time determine that conditions are such as to require a sale of said stock, or any thereof, for the protection of the estate in conservation or liquidation, the New Company, or its policy holders, he may sell the same upon order of the Court made after a proper showing of the necessity for such sale upon a full hearing, of which hearing notice shall be given to such parties as the Court may determine are interested therein, and in such manner as the Court may direct.

4308

4309 (e) It is the purpose, spirit, and intent of this agreement that, unless the provisions for mutualization are eliminated pursuant to the provisions of subparagraph (b) of this paragraph 20, the stock of the New Company shall not be sold or disposed of prior to the full restoration of benefits under Non-Can Policies except by proceedings for mutualization, so long as a reasonable probability of completing restoration of benefits under Non-Can Policies shall continue;

4310 and also, to the end that benefits under Non-Can Policies may be restored as early as practicable, the New Company declares that it will be its policy, at all times while its stock is held by the Conservator or Liquidator, so far as is reasonably practicable in the ordinary and reasonable conduct of its business, to endeavor to write new Non Participating insurance in an amount equal to or in excess of the amount of new Participating Insurance written by it.

4311 (f) If the provisions of this paragraph 20, or of any one or more of the subparagraphs hereof, should be contrary to law or illegal or void, then such paragraph, subparagraph, or subparagraphs, shall be null and void, and shall be deemed separable from the remaining covenants and agreements in this agreement contained; and shall in no way affect the validity of any of the remaining provisions of this agreement.

4312

Agents

(21) The New Company hereby assumes all obligations of the Old Company under agency contracts, provided the other party thereto accepts assumption of his contract by the New Company and agrees to continue bound thereby; provided, however, that the New Company shall not assume or be bound by any agreement or agreements which the Old Company may have made with agents with respect to the payment of commissions on any policies after lapsation. For the purpose of determining Agent's commissions, the reinsurance of policies of the Old Company under this agreement shall be deemed a continuance of existing policies, and not the writing of new insurance by the New Company.

4313

Moratorium

(22) A Moratorium shall be and is hereby imposed upon all cash surrender values and policy loans (except loans for the purpose of paying premiums due or to be due within thirty (30) days of the loan date on the same policy or on policies of any form (issued with respect to the same person) for a period expiring November 22, 1936; and provided, that the period or extent of this moratorium may be extended or restricted from time to time by ex parte order of the Court made on the application of the Commissioner.

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4315 The provisions of this paragraph shall not, however, apply to any increases in values that are accumulated from premium payments or loan repayments which are received subsequent to the effective date of this agreement.

During such period as this moratorium is in effect, the cash surrender option of all policies of the Old Company shall be considered as non-existent, except as provided above, and all policy holders who do not pay their premiums, and who
4316 are entitled under their policies to a guaranteed restricted value, will be ~~restored~~ to the automatic non forfeiture value (properly adjusted for any policy indebtedness and accrued interest thereon) under the policy.

Notice

(23) The New Company shall mail as
4317 promptly after the making of the order approving this agreement as shall be reasonably practicable to the insured named in all policies and supplementary contracts of the Old Company in force at the effective date of this agreement, and any assignees thereof of record, a copy of this agreement as executed, to which the New Company may attach its certificate of reinsurance and assumption, inserted in an envelope, first class postage prepaid, addressed to the name and address of each of the persons aforesaid last

4318 shown upon the records of the Old Company. There shall also be included therewith a notice referring to the provisions of paragraph 24 hereof with respect to the manner in which election or rejection of the reinsurance and assumption hereby contained must be manifested. By "assignees of record" is meant assignees appearing upon the records of the Old Company at its Home Office.

4319 Election of Policy Holders and
Claimants and the Effect Thereof.

(24) Policy holders and policy claimants of the Old Company may elect to accept or reject the reinsurance and assumption hereunder of his policy, contract, or claim at any time within seventy-five (75) days after the entry of the order approving this agreement. The filing with the New Company after the entry of the order of the Court approving the agreement of any 4320 claim or proof of loss shall constitute an acceptance of this agreement and a waiver of any right to reject the same. Any policy holder or policy claimant who shall fail to notify the New Company, in writing, of his rejection within said period shall automatically be deemed to have assented to and become bound by this agreement, and entitled to the benefits hereof.

The filing of a claim with the Liquidator shall, unless such claim is withdrawn within seventy-

4321 five (75) days after the entry of the order of the Court approving this agreement, be deemed a rejection of such reinsurance and assumption. The New Company may nevertheless, with the consent of the Commissioner, and upon such terms as the New Company in its sole discretion may desire to impose, permit the withdrawal of a rejection whether or not the period for election herein fixed shall have expired, and permit the person so withdrawing his rejection to accept the
4322 reinsurance and assumption herein contained.

Any person electing to accept the reinsurance and assumption herein contained shall thereby be deemed to have entered into a novation with the New Company, and to have released the Old Company from all claims, liabilities, or obligations with respect to his policy or policy claim hereby assumed or reinsured, whether wholly or partially assumed or reinsured.

4323 Conservator Not Personally Liable

(25) No personal liability on the part of Samuel L. Carpenter, Jr. is assumed under this agreement, but he is bound by the provisions of this agreement only in his capacity as such Conservator or as Liquidator of the Old Company. All undertakings and obligations herein set forth as undertakings or obligations of the Conservator are made only in his said capacities and to such extent as he had authority to make the same, and

4324 the Conservator makes no warranty of his authority to make the same.

Liability of New Company Limited Hereby

(26) It is understood that the New Company does not assume any liability of any character or description whatsoever of the Old Company except as and to the extent in this agreement expressly provided, and the provisions of this

4325 agreement shall be a complete and adequate defense by the New Company to any action, other than an action to enforce the express provisions of this agreement, which may be brought by any policy holders, policy claimants, creditors, or stockholders of the Old Company.

Assignability of Agreement

4326 (27) This agreement and all rights, duties, and obligations hereunder shall inure to the benefit of and be binding upon the respective parties hereto, their several heirs, executors, administrators, successors, and assigns.

Approval of the Court

(28) This agreement shall not become binding upon any party hereto unless and until it shall have been approved by an order of the Court;

4327 and when so approved shall constitute an independent agreement, superseding all prior agreements; and also an amendment of the agreement of July 22, 1936, relating to the reinsurance by the New Company of the business of the Old Company in such manner that said agreement, as amended, shall read in its entirety in the language of this agreement.

4328 In Witness Whereof, the parties hereto have executed this agreement as of July 22, 1936, at the hour of one o'clock P. M. Pacific Standard Time, but in fact on the day of October, 1936.

PACIFIC MUTUAL LIFE INSURANCE COMPANY,

By

Its Vice-President

4329 (Corporate Seal)

Attest:

Its Asst. Secretary

"NEW COMPANY"

.....
SAMUEL L. CARPENTER, JR.

Insurance Commissioner of the State of California,
as Conservator of The Pacific Mutual
Life Insurance Company of California

4330 The undersigned, Samuel L. Carpenter, Jr.,
as Insurance Commissioner of the State of Cali-
fornia, does hereby give his written consent to
and approval of the foregoing Rehabilitation and
Reinsurance Agreement.

SAMUEL L. CARPENTER, JR.

4331 as Insurance Commissioner of the State of
California.

Endorsed: Entered Dec. 7, 1936. Docketed
Dec. 8, 1936 Book 958, page 83. By I. Bot-
tomley, deputy.

4332

✓ Filed 4:51 P. M. Dec. 4, 1936. L. E. Lamp-
ton, county clerk; by E. T. Crozier, deputy.

4333 [TITLE OF COURT AND CAUSE.]

Clerk's Certificate to Judgment Roll.

The foregoing attached papers constitute the judgment roll in this action.

4334

Filed Dec. 8, 1936.

L. E. LAMPTON,

County Clerk, and Ex-Officio Clerk of the Superior Court of the State of California in and for the County of Los Angeles.

4335

By F. M. ULLRICH,

Deputy.

4336 [TITLE OF COURT AND CAUSE.]

Amended Notice of Appeal of Wm. H. Neblett.

To Names of Interested Persons	Interest Alleged	Attorneys Representing
Samuel L. Carpenter, Jr.	Insurance Commission- er of the State of Cali- fornia	U. S. Webb Attorney General Shepard Mitchell
4337 Pacific Mutual Life Insur- ance Company of Califor- nia, a corporation	Respondent	O'Melveny, Tuller & Myers. Overton, Lyman & Plumb.
Charles Ross Cooper et al.	Holders of Non-can Policies	Hugh K. McKevitt
Rupert B. Turnbull et al. for themselves and for other Non-Cancellable Pol- icyholders similarly sit- uated	Holders of Non-can Policies	Rupert B. Turnbull
4338 Francis Adams, for him- self and for other Non- Cancellable Policyholders similarly situated	Holder of Non-Can Policy, under which ad- vanced settlement of disability claim is pending	Rupert B. Turnbull
George W. Manierre and B. Robert Getts, on their own behalf and on behalf of all similarly situated policyholders	Holders of Non-Can Policies	Messrs. Manierre & Cuthbertson
E. B. Tilton et al.	Holders of Non-Can Policies	Kenyon F. Lee

4339	To Names of Interested Persons	Interest Alleged	Attorneys Representing
	Vernon Bettin and William George Dickinson	Holders of Non-Can Policies	Messrs. Bettin, Painter & Wait
	Marshall D. Hall and Joseph C. McManus on behalf of themselves and other holders of Non-Cancellable Income Policies	Holders of Non-Can Policies	H. S. Dottenheim
	Neil S. McCarthy	Holder of Non-Can Policy	Neil S. McCarthy
4340	Ralph R. Huesman	Commercial Accident Policyholder; Non-Can Policyholder and Life Policyholder	Neil S. McCarthy
	Broadtown Investment Company, a corporation	Shareholder and beneficiary under Life Policies	Neil S. McCarthy
	Dr. Arthur B. Allen et al.	Holders of Non-Can Policies	W. B. Etheridge
4341	David Lynn Openshaw et al.	Holders of Non-Can Policies	Delvy T. Walton
	Henry B. Senn	Holder of Non-Can Policy	Albert E. Coger
	Herbert Freston	Holder of Non-Can Policy	Herbert Freston
	Robert J. Webb and Philip M. Klutznick, for themselves and all other persons similarly situated	Holders of Non-Can Policies	Messrs. Jacob J. Lieberman and Aaron B. Rosenthal
	R. Rabinowitz	Holder of Non-Can and Life Policies	Lawler & Felix

4342	<u>To Names of Interested Persons</u>	<u>Interest Alleged</u>	<u>Attorneys Representing</u>
	Roscoe R. Hess	Holder of Non-Can Policy	Roscoe R. Hess and David R. Rubin
	G. C. Parsons, J. A. Marvin and G. R. Snider, et al., on behalf of themselves and all other holders of Non-Cancellable Policies, and as members of a Protective committee	Holders of Non-Can Policies	Messrs. Chapman, Snider, Duke & Landis, Hiram W. Johnson, Jr. Frank P. Doherty
4343	for Holders of Non-Cancellable Income Policies		
	William H. Neblett	Holder of Life Policy	William H. Neblett R. Dean Warner and LeRoy B. Lorenz
	Austin O. Martin	Holder of Non-Can Policy	Rex Hardy
	Rex Hardy	Holder of Non-Can Policy	Rex Hardy
4344	William. A. Sullivan	Insurance Commissioner of the State of Washington	Ivan Merrick
	Arthur E. White	Holder of Non-Can Policy	Arthur E. White
	George I. Cochran et al.	Stockholders	Oscar Lawler and Harold Judson
	Wilbur A. Beckett et al.	Stockholders	Shattuck, Davis & Story
	Arthur D. Wunner	Former General Agent	Paul Overton

4345 To Names of Interested Persons	Interest Alleged	Attorneys Representing
C. F. Wesley et al.	Non-Can Policy- Holders	Latham, Watkins & Bouchard
Wilbur G. Katz et al.	Holders of Non-Can Policies	Bell, Boyd & Marshall
4346 Carl C. Katleman et al., for himself and all others similarly situated	Holders of Non-Can Policies	Newlin & Ashburn
Andrew J. Copp, Jr., on his own behalf	Holder of Non-Can Policy	Carl C. Katleman
Ralph C. Hamlin	Holder of Non-Can Policy	Andrew J. Copp, Jr.
Rowe Sanderson et al.	Non-Can Policy- Holders	Garnet C. Rainey
4347 Robert Casamajor et al.	Non-Can Policy- holders	Chapman & Chapman
Ben S. Hunter	Life, Non-Can and Commercial Policy- holder	Hahn & Hahn
Clara M. Garunan et al.	Allegedly a Non-Can Policyholder	Ben S. Hunter
John P. Oliver	Non-Can Policy holders	M. W. Purcell
Harold S. Cook, et al.	Stockholders' Pro- tective Committee	John P. Oliver
		Loeb, Walker & Loeb

**4348 To Names of Interested
Persons**

Interest Alleged

**Attorneys
Representing**

Edwin Janss et al.

Policyholders' Committee representing commercial policyholders, non-can policyholders and life policyholders.

William M. Rains

E. A. Conway

Non-Can Policyholder, and as Secretary of State and Ex-Officio Commissioner of Insurance of the State of Louisiana, on behalf of all policyholders in that state

D. M. Ellison
Attorney for the
Secretary of State
of Louisiana

4349

Carroll C. Day, Harry C. Fabling, Joseph M. Gantz, Jack Paschall and Ralph J. Wetzel

On their own behalf and on behalf of each of them, and on behalf of all general agents and managers of The Pacific Mutual Life Insurance Company of California (each of said named interveners being a general agent, life policyholder, non-can policyholder, and stockholder

Cosgrove & O'Neal

4350

J. Parker Evans, on behalf of himself and all other holders of active life non-cancellable income policies issued in the State of Alabama who may wish to join with him in the proceeding

Non-Can Policyholder

A. A. Carmichael,
Attorney-General
of Alabama, and
Frank E. Spain,
Special Assistant
Attorney-General
of Alabama

4351 You and each of you will please take notice
that the intervenor, Wm. H. Neblett, appeals to
the Supreme Court of the State of California
from that certain order or judgment of the Su-
perior Court of Los Angeles County, California,
“Approving Rehabilitation and Reinsurance
Agreement” rendered by the Court herein on
December 4, 1936 and entered by the clerk on
4352 the 7th day of December, 1936, in Book 958, at
page 83 of Judgments in the clerk’s office of
the County Clerk of Los Angeles County.

Dated: December 14, 1936.

WM. H. NEBLETT,
In Pro Persona.

4353 R. DEAN WARNER,
LEROY B. LORENZ, AND
E. WALTER GUTHRIE,

Attorneys for Intervenor Wm. H. Neblett.

Wm. H. Neblett
R. Dean Warner
Leroy B. Lorenz
E. Walter Guthrie

4354 In the Superior Court of the State of California in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. No. 404673.

AFFIDAVIT OF SERVICE BY MAIL.

4355

State of California, County of Los Angeles—ss.

Dorothy Day, being first duly sworn, deposes and says:

That she is a citizen of the United States and a resident of the County of Los Angeles; that she is over the age of 18 years, and not a party to the within action; that her business address is 1009 Transamerica Building, Los Angeles, California; that on the 14th day of December, 1936, within

4356

she served the/amended notice of appeal of Wm. H. Neblett in the above-entitled matter on the interested persons in said action, by placing a true copy thereof in an envelope addressed to the attorneys of record for said interested persons at the office address of said attorneys, as follows:

- 4357 "U. S. Webb,
Attorney General,
State Building, Los Angeles,
California;
- Shepard Mitchell,
603 Roosevelt Building,
Los Angeles, California;
- O'Melveny, Tuller &
Myers,
10th Floor, Title Insurance
Bldg., Los Angeles,
California;
- Overton, Lyman & Plumb,
733 Roosevelt Bldg.,
Los Angeles, California;
- 4358 Rupert B. Turnbull,
509 Union Bank Bldg.
Los Angeles, California;
- "Manierre & Cuthbertson,
300 Garfield Building,
Los Angeles, California.
- Kenyon F. Lee
820 H. W. Hellman Bldg.,
Los Angeles, California.
- Bettin, Painter & Wait,
1030 Rives Strong Bldg.,
Los Angeles, California.
- H. S. Dottenheim,
410 Board of Trade Bldg.,
Los Angeles, California.
- 4359 Neil S. McCarthy,
1111 Associated Realty Bldg.,
Los Angeles, California.
- W. B. Etheridge,
800 First Trust Building,
Pasadena, California.
- Delvy T. Walton,
1120 Rowan Building,
Los Angeles, California.
- Albert E. Coger,
230 H. W. Hellman Build-
ing, Los Angeles, California.
- Herbert Freston,
1010 Bank of America Build-
ing, Los Angeles, California.

- 4360** Jacob J. Lieberman and
Aaron B. Rosenthal, 916 Garfield Building,
Los Angeles, California.
- Lawler & Felix, 800 Standard Oil Bldg.,
Los Angeles, California.
- Roscoe R. Hess and
David R. Rubin, 406 Rives Strong Bldg.,
Los Angeles, California.
- Chapman, Snider, Duke &
Landis, Hiram W. Johnson,
Jr., Frank P. Doherty, c/o Frank P. Doherty,
517 Title Insurance Bldg.,
Los Angeles, Cal.
- 4361** Rex Hardy, 535 Van Nuya Building,
Los Angeles, California.
- Ivan Merrick, Insurance
Commissioner of the State
of Washington, State Building,
Olympia, Washington.
- Shattuck, Davis & Story, 612 Story Building,
Los Angeles, California.
- Paul Overton, 600 James Oviatt Bldg.
Los Angeles, California.
- 4362** Latham, Watkins &
Bouchard, 1112 Title Guarantee Bldg.,
Los Angeles, California.
- Newlin & Ashburn 1020 Edison Building,
Los Angeles, California.
- Carl C. Katleman, 720 Garfield Building,
Los Angeles, California.
- "Andrew J. Copp, Jr. 308 Pacific Commerce Build-
ing, Los Angeles, California
- Garnet C. Rainey 1300 Quinby Building,
Los Angeles, California

4363 Chapman & Chapman

1322 Security Title Insurance
Bldg., Los Angeles, California.

Hahn & Hahn,

Pacific Southwest Building,
Los Angeles, California

Ben S. Hunter,

712 Rowan Building,
Los Angeles, California

M. W. Purcell,

802 Black Building,
Los Angeles, California

4364 John P. Oliver

607 Pacific Commerce Bldg.,
Los Angeles, California

Loeb, Walker & Loeb,

610 Pacific Mutual Bldg.,
Los Angeles, California

William M. Rains,

939 Rowan Building,
Los Angeles, California

D. M. Ellison,
Attorney for the Secretary
of State of Louisiana,

Baton Rouge,
Louisiana.

4365 Cosgrove & O'Neil

1031 Rowan Building,
Los Angeles, California

A. A. Carmichael,
Attorney General of Alabama,
and Frank E. Spain,
Special Assistant Attorney-
General of Alabama

Montgomery,
Alabama.

Arthur E. White,

General Delivery,
Los Angeles, California.

Hugh K. McKevitt,

Russ Building,
San Francisco, California."

4366 and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorneys for the person by and for whom said service was made.

4367 That there is delivery service by United States mail at the place so addressed or/and there is a regular communication by mail between the place of mailing and the place so addressed.

DOROTHY DAY.

Subscribed and sworn to before me this 14th day of December, 1936.

(Seal)

HARRY W. DUDLEY,

Notary Public in and for the County of Los Angeles, State of California.

4368

Endorsed: Filed 4:47 P. M. Dec. 14, 1936.

L. E. Lampton, county clerk; by C. H. Holdredge, deputy.

369 [TITLE OF COURT AND CAUSE.]

Notice of Appeal of Vernon Bettin and William George Dickinson.

To Names of Interested Persons	Interest Alleged	Attorneys Representing
Samuel L. Carpenter, Jr.	Insurance Commission- er of the State of Cali- fornia	U. S. Webb Attorney General Shepard Mitchell
Pacific Mutual Life Insur- ance Company of Califor- nia, a corporation	Respondent	O'Melveny, Tuller & Myers. Overton, Lyman & Plumb.
Charles Ross Cooper et al.	Holders of Non-can Policies	Hugh K. McKevitt
Rupert B. Turnbull et al. for themselves and for other Non-Cancellable Pol- icyholders similarly sit- uated	Holders of Non-can Policies	Rupert B. Turnbull
Francis Adams, for him- self and for other Non- Cancellable Policyholders similarly situated	Holder of Non-Can Policy, under which ad- vanced settlement of disability claim is pending	Rupert B. Turnbull
George W. Manierre and B. Robert Getts, on their own behalf and on behalf of all similarly situated policyholders	Holders of Non-Can Policies	Messrs. Manierre & Cuthbertson
E. B. Tilton et al.	Holders of Non-Can Policies	Kenyon F. Lee

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4372 To Names of Interested
Persons

Interest Alleged

Attorneys
Representing

Vernon Bettin and Wil-
liam George Dickinson

Holders of Non-Can
Policies

Messrs. Bettin, Painter
& Wait

Marshall D. Hall and
Joseph C. McManus on
behalf of themselves and
other holders of Non-Can-
cellable Income Policies

Holders of Non-Can
Policies

H. S. Dottenheim

Neil S. McCarthy

Holder of Non-Can
Policy

Neil S. McCarthy

4373

Ralph R. Huesman

Commercial Accident
Policyholder; Non-Can
Policyholder and Life
Policyholder

Neil S. McCarthy.

Broadtown Investment
Company, a corporation

Shareholder and bene-
ficiary under Life
Policies

Neil S. McCarthy

Dr. Arthur B. Allen et al.

Holders of Non-Can
Policies

W. B. Etheridge

4374 David Lynn Openshaw
et al.

Holders of Non-Can
Policies

Delvy T. Walton

Henry B. Senn

Holder of Non-Can
Policy

Albert E. Coger

Herbert Freston

Holder of Non-Can
Policy

Herbert Freston

Robert J. Webb and
Philip M. Klutznick, for
themselves and all other
persons similarly situated

Holders of Non-Can
Policies

Messrs. Jacob J. Lieb-
erman and Aaron E.
Rosenthal

R. Rabinowitz

Holder of Non-Can
and Life Policies

Lawler & Felix

4375 To Names of Interested Persons	Interest Alleged	Attorneys Representing
Roscoe R. Hess	Holder of Non-Can Policy	Roscoe R. Hess and David R. Rubin.
G. C. Parsons, J. A. Mag vin and G. R. Snider, et al., on behalf of them- selves and all other hold- ers of Non-Cancellable Policies, and as members of a Protective committee for Holders of Non-Can- cellable Income Policies	Holders of Non-Can Policies	Messrs. Chapman, Sni- der, Duke & Landis, Hiram W. Johnson, Jr. Frank P. Doherty
William H. Neblett	Holder of Life Policy	William H. Neblett R. Dean Warner and LeRoy B. Lorenz
Austin O. Martin	Holder of Non-Can Policy	Rex Hardy
Rex Hardy	Holder of Non-Can Policy	Rex Hardy
4377 William A. Sullivan	Insurance Commis- sioner of the State of Washington	Ivan Merrick
Arthur E. White	Holder of Non-Can Policy	Arthur E. White
George I. Cochran et al.	Stockholders	Oscar Lawler and Harold Judson
Wilbur A. Beckett et al.	Stockholders	Shattuck, Davis & Story
Arthur D. Wunner	Former General Agent	Paul Overton

4378 To Names of Interested Persons

Interest Alleged

Attorneys Representing

C. N. Wesley et al.

Non-Can Policy-Holders

Latham, Watkins & Bouchard

Wilbur G. Katz et al.

Holders of Non-Can Policies

Bell, Boyd & Marshall

Newlin & Ashburn

4379 Carl C. Katleman et al., for himself and all others similarly situated

Holders of Non-Can Policies

Carl C. Katleman

Andrew J. Copp, Jr., on his own behalf

Holder of Non-Can Policy

Andrew J. Copp, Jr.

Ralph C. Hamlin

Holder of Non-Can Policy

Garnet C. Rainey

Rowe Sanderson et al.

Non-Can Policy-Holders

Chapman & Chapman

Robert Casamajor et al.

Non-Can Policy-holders

Hahn & Hahn

4380

Ben S. Hunter

Life, Non-Can and Commercial Policy-holder

Ben S. Hunter

Clara M. Garunan, et al.

Allegedly a Non-Can Policyholder

M. W. Purcell

John P. Oliver

Non-Can Policy holders

John P. Oliver

Harold S. Cook, et al.

Stockholders' Protective Committee

Loeb, Walker & Loeb

**4381 To Names of Interested
Persons**

Interest Alleged

**Attorneys
Representing**

Edwin Janss et al.

Policyholders' Committee representing commercial policyholders, non-can policyholders and life policyholders

William M. Rains

E. A. Conway

Non-Can Policyholder, and as Secretary of State and Ex-Officio Commissioner of Insurance of the State of Louisiana, on behalf of all policyholders in that state

D. M. Ellison
Attorney for the
Secretary of State
of Louisiana

4382

Carroll C. Day, Harry C. Fabling, Joseph M. Gantz, Jack Paschall and Ralph J. Wetzel

On their own behalf and on behalf of each of them, and on behalf of all general agents and managers of The Pacific Mutual Life Insurance Company of California (each of said named interveners being a general agent, life policyholder, non-can policyholder, and stockholder

Cosgrove & O'Neal

4383

J. Parker Evans, on behalf of himself and all other holders of active life non-cancellable income policies issued in the State of Alabama who may wish to join with him in the proceeding

Non-Can Policyholder

A. A. Carmichael,
Attorney-General
of Alabama, and
Frank E. Spain,
Special Assistant
Attorney-General
of Alabama

4384 You and each of you will please take notice that the objectors Vernon Bettin and William George Dickinson appeal to the Supreme Court of the state of California from that certain order or judgment of the Superior Court of Los Angeles county, California, "Approving Rehabilitation and Reinsurance Agreement" rendered by the court herein on December 4, 1936, and entered by the clerk on the 7th day of December, 4385 1936, in book 958, at page 83 of judgments in the clerk's office of the county clerk of Los Angeles county.

Dated: December 28, 1936.

BETTIN, PAINTER & WAIT,

VERNON BETTIN,

*Attorneys for Objectors Vernon. Bettin and
William George Dickinson.*

4386

4387 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. No. 404,673.

AFFIDAVIT OF MAILING.

4388 State of California, County of Los Angeles—ss.

Ray H. Kinnison, being first duly sworn, deposes and says: That affiant is a citizen of the United States, over eighteen years of age, resident of Los Angeles County and not a party to the within action.

That affiant's business address is 1030 Rives Strong Building, Los Angeles, Calif.

That affiant served a copy of the attached
4389 Notice of Appeal by placing said copy in an envelope addressed to the following persons at the office addresses set opposite their respective names:

Rupert B. Turnbull	509 Union Bank Bldg., Los Angeles, Cal.
--------------------	--

Kenyon F. Lee	820 H. W. Hellman Bldg., Los Angeles, Cal.
---------------	---

Neil S. McCarthy	1111 Associated Realty Bldg., L. A., Cal.
------------------	--

4390 W. B. Etheridge

800 First Trust Bldg.,
Pasadena, Calif.

Mr. Shepard Mitchell
and U. S. Webb,
Attorney General

603 Roosevelt Bldg.,
Los Angeles, Cal.

O'Melveny, Tuller &
Myers and Overton;
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909 Title Insurance Bldg.,
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Delvy T. Walton

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4391

H. S. Dottenheim

410 Board of Trade Bldg.,
L. A., Calif.

Albert E. Coger

230 H. W. Hellman Bldg.,
L. A., Calif.

Herbert Freston

1010 Bank of America Bldg.,
L. A., Calif.

Jacob J. Lieberman and
Aaron B. Rosenthal

916 Garfield Bldg.,
Los Angeles, Cal.

4392

Lawler & Felix

800 Standard Oil Bldg.,
L. A., Calif.

Roscoe R. Hess and
David R. Rubin

406 Rives Strong Bldg.,
L. A., Calif.

Frank P. Doherty,
Messrs. Chapman,
Snider, Duke & Lan-
dis, Hiram W. John-
son, Jr.

517 Title Insurance Bldg.,
L. A., Calif.

- 4393 Oscar Lawler and Har- 800 Standard Oil Bldg.,
old Judson L. A., Calif.
- Shattuck, Davis & Story 612 Story Bldg.,
Los Angeles, Cal.
- Latham, Watkins & 1112 Title Guarantee Bldg.,
Bouchard L. A., Calif.
- Paul Overton 600 James Oviatt Bldg.,
L. A. Calif.
- 4394 William H. Neblett, R. 1009 Transamerica Bldg.,
Dean Warner and L. A., Calif.
LeRoy B. Lorenz
- Newlin & Ashburn 1020 Edison Bldg.,
Los Angeles, Cal.
- Carl C. Katleman 720 Garfield Bldg.,
Los Angeles, Cal.
- Rex Hardy 535 Van Nuys Bldg.,
Los Angeles, Cal.
- 4395 Hahn & Hahn 808 Pacific Southwest Bldg.,
Pasa., Cal.
- Andrew J. Copp, Jr. 308 Pacific Commerce Bldg.,
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- Garnet C. Rainey 1300 Quinby Bldg.,
Los Angeles, Cal.
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4396 John P. Oliver

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1322 Security Title Ins. Bldg.,
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610 Pacific Mutual Bldg.,
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Ben S. Hunter

712 Rowan Bldg.,
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4397 William M. Rains

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Cosgrove & O'Neal

1031 Rowan Bldg.,
Los Angeles, Cal.

A. A. Carmichael and
Frank E. Spain

State Capital, Montgomery,
Alabama.

D. M. Ellison, Attor-
ney for Secretary of
State of Louisiana

Baton Rouge, Louisiana.

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General Delivery,
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Manierre & Cuthbertson

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Los Angeles, Cal.

Ivan Merrick, Insur-
ance Commissioner of
the State of Wash-
ington

Olympia, Washington.

Hugh K. McKevitt

1620 Russ Bldg.,
San Francisco, Calif.

4399 which said envelopes were then sealed and postage fully prepaid thereon, and thereafter were on December 30th, 1936, deposited in the United States mail at Los Angeles, Calif. That there is a delivery service by United States mail at the place so addressed or regular communication by United States mail between the place of mailing and the place so addressed.

RAY H. KINNISON.

4400

Subscribed and sworn to before me this 30th day of December, 1936.

(Seal)

GERTRUDE R. KLEIN,

*Notary Public in and for the County of
Los Angeles, State of California.*

4401

Endorsed: Filed Dec. 31, 1936, 3:37 p. m.
L. E. Lampton, county clerk; by C. H. Hold-
redge, deputy.

4402

Clerk's Certificate.

STATE OF CALIFORNIA, }
COUNTY OF LOS ANGELES } ss.

I, L. E. Lampton, county clerk and *ex officio* clerk of the Superior Court in and for said county, hereby certify that I have compared the foregoing transcript with the original papers in the above entitled action now on file in my office and that the same contains full, true and correct copies of the judgment roll and notices of appeal, together with the endorsements on said papers and documents, all of which papers and documents are a part of the files and records of the Superior Court.

4403

— In witness whereof I have hereunto set my hand and affixed the seal of said Superior Court this.....day of January, 1937.

4404

(Seal)

L. E. LAMPTON, *County Clerk.*

By, *Deputy.*

4405 [TITLE OF COURT AND CAUSE.]

Opinion of the Trial Judge.

Los Angeles, California,

Thursday, December 3, 1936, 10 A. M.

The Court: In the case of Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California, petitioner, against the Pacific Mutual Life Insurance Company of California, the court is now ready to announce its
4406 conclusion upon the matters submitted. Before entering upon this task, the court feels under obligation to express to the members of the bar who have participated in this proceeding throughout this long period, which now covers nearly four months, the gratitude of the court for your uniform courtesy to the court, to the judge thereof, and to each other in the proceedings that have taken place. I like to say that we have all been
4407 working together to a common end and it is rather unusual where so many members of the bar participate in a proceeding, representing in several instances adverse and antagonistic interests, that such a harmony of action should have resulted in this proceeding. By that I am reminded of a definition given by Dean Roscoe Pound of the Harvard Law School in an address to the American Bar Association at Boston last summer of the term "profession," spoken of as the profession of law. He said: "By the term

4408 'profession,' when we speak of the profession of law we mean an organized calling in which men pursue some learned art and are united in the pursuit of it as a public service, none the less a public service because they make a livelihood thereby. I have never in my experience at the bar or on the bench seen the true essence of the profession and practice of the law so thoroughly demonstrated as it has been by counsel who have participated in this hearing. You have demon-

4409 strated that you have been here pursuing your duties as a public service. For this I am very grateful. It has minimized my troubles, and greatly lessened the weight of the burden that was cast upon me when I happened to be chosen to preside over this hearing and determine the issues therein.

A brief history of this proceeding and a statement of the issues that are before us will be helpful.

4410 On July 22, 1936, an order was entered herein under the provisions of section 1011 of the Insurance Code of 1935, vesting title to all the assets of the Pacific Mutual Life Insurance Company of California in the Insurance Commissioner of this state, with directions to him to conduct, as conservator, the business of such company.

On September 25, 1936, the Commissioner, as conservator, filed his petition herein, setting forth

4411 a plan cast in the form of a rehabilitation and reinsurance agreement, and asked the court's approval thereof, under authority of section 1043 of the Insurance Code.

An order to show cause why such plan should not be approved, together with an order for notice, was issued by the court, and hearing thereon was set for October 19, 1936.

4412 On October 17, 1936, Mr. L. M. Giannini, on behalf of Transamerica Group, filed a proposal to reinsure the business of the company, which proposal was amended and revised and again presented and filed on November 21, 1936, during the progress of the hearing; and this proposal has been adopted, and repropoed by interveners represented by Mr. Doherty and those represented by Mr. Dottenheim.

4413 On October 19, 1936, a hearing commenced and has continued during each judicial day to the present moment involving issues of law and fact created by numerous interventions by parties in interest and by answers to the order to show cause and by motions made during the progress of the hearing. The single issue of fact relates to the existence of a state of insolvency or a hazardous condition of the company at the date of taking over by the Commissioner. This may be expeditiously disposed of by stating that it is clearly established by proofs that at the date of taking the condition of the company found upon

4414 examination by the Commissioner was such that its further transaction of business would be hazardous to policyholders and to the public and that the company was insolvent within the meaning of article 13, chapter 1, part 2, division 1 of the Insurance Code. Among the issues of law, those calling for decision at this time are as follows:

First: Is the transfer of assets provision in the conservator's plan condemned by sections 3439 and 3442 of the Civil Code?

4415 Second: Are sections 1011 and 1043 of the Insurance Code valid when measured by the terms of section 10, article 1, of the Constitution of the United States and of the corresponding provisions in section 16 of article 1 of the California Constitution prohibiting the passage of laws by a state which impair the obligations of contracts?

4416 Third: Is section 1043 of the Insurance Code valid under the Fourteenth Amendment to the Constitution of the United States and under the corresponding provisions in section 13 of article 1 of the State Constitution prohibiting state legislation which deprives any person of property without due process of law or denies equal protection of the law?

Fourth: Is the proposed plan when considered as an exercise of lawful power by the state agent under the above code provisions and under laws of the state valid when measured by the contract

4417 and due process and equal protection clauses of the Constitution? And because of the injection of other plans or offers there has arisen the following incidental question:

Fifth: What is the extent or limitation of the powers of this court under the Insurance Code and general laws in respect to action on the conservator's petition for approval of his plan and in respect to modification thereof or substitution therefor of another and different plan and in
4418 respect to ordering other proceedings under the code to be instituted by the conservator?

Under the due process clause, the question of validity of the proposed plan falls into two parts: The one relating to whether the plan is fair, just and equitable and not arbitrary or capricious; the other relating to notice and hearing.

The first question relating to fraudulent conveyance is the single statutory law issue and requires no separate consideration; as the answer
4419 thereto will logically follow with the answers to the constitutional questions.

It will be recalled that sections 3439 and 3442 relate to the character of transfers made by an owner for the purpose of hindering, delaying or defrauding creditors. Section 3439 condemns such; and section 3442 adds to the condemnation a provision for a presumption, un rebuttable, that where the transfer is made by the owner while in a state of insolvency, the intent to defraud is

4420 established. In all other cases intent is a matter of proof. The question arising in this proceeding under the invocation of those sections relates to a proposed transaction which, in effect, would be the same as a judicial sale; because if the plan is approved, the court orders the sale. I take it for granted that there can exist no intent to defraud under any statute where the transfer is made lawfully, under an order of the court.

4421 As a preface to this decision on the law questions, and as the foundation upon which the conclusions of the court will be erected, a statement of general rules accepted without question by all of the learned profession of law and by the courts, and excerpts from cases that constitute authority binding upon this court will be first given.

4422 And I call attention in this connection to this, that the cases from which these excerpts are taken, with possibly one exception, are from courts, or were lodged in courts which have the right to direct this court, and bind it, namely, from the Supreme Court of the United States whose authority is paramount in this country upon all questions arising under the Constitution of the United States. Next, is the Supreme Court of the state of California, and the several appellate courts of the state of California whose authority over this court on all questions of law, statutory or constitutional, is binding.

4423 Next, the decisions of the courts of the state of New York, from which state and its statutes, as interpreted by the courts of that state, the statute here in question was substantially copied. Of that I will have more to say later.

“The duty of deciding whether a statute is void as being in conflict with the State or National Constitution is characterized by the court as of the most delicate nature. In such a case a clear and substantial conflict with the fundamental law must be found to exist to justify the condemnation of the statute; but, when found, courts must not hesitate to condemn. Their duty is plain and should be fearlessly performed. The Legislature is presumed to have had the Constitution in mind when passing statutes. The exponent of the popular will and its act must be treated with respect and reconciled and sustained if possible. A court is never justified, therefore, in setting at naught an act of the Legislature unless it is clearly repugnant to the Constitution and its power so to do should never be exerted except when the conflict between the statute and the Constitution is palpable and incapable of reconciliation.

In other words, nothing short of a constitutional prohibition so explicit and clear as to leave no reasonable doubt on the mind can justify the court in declaring an act of the Legislature null and void.

4426 Having in mind that the Insurance Code, and particularly the sections thereof here in controversy, is an act remedial in its nature and passed by the California Legislature under authority of its reserve police power, it has been universally held by the courts of last resort everywhere that contracts made with institutions affected with a public interest are inherently subject to the paramount power of the sovereign states, the people; the reserve power, sometimes called the police
4427 power, to enact, through the Legislature, additional remedial legislation in the public interest affecting the supervision, regulation, control or liquidation of such corporate institutions."

Citing *West River Bridge v. Dix and others*, 6 Howard 507, and *Home Building & Loan Association v. Blaisdell*, 290 U. S. 398.

In *Lawton v. Steel*, 152 U. S. 133, it is stated:

4428 "To justify the state in thus interposing its authority in behalf of the public it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. Its determination as to what is the proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."

4429 , During the early development of our government under the Constitution, the Supreme Court of the United States in the *Legal Tender* cases, 12 Wallis 457, at page 551, declared:

“As in a state or civil society property of a citizen is ownership subject to the lawful demands of the sovereign, so contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend
4430 to the defeat of legitimate government authority.”

In considering the scope of the impairment clause in the Constitution as affected by the reserve police power, the Supreme Court of the United States in the *Blaisdell* case, 290 U. S. 398, said:

“Not only is the constitutional provision qualified by the measure of control which the state
4431 retains over remedial processes, but the state also continues to possess authority to safeguard the vital interests of its people. It does not matter that legislation appropriate to the end has the result of modifying or abrogating contracts already in effect. *Stevenson v. Binford*, 287 U. S. 251.”

Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sov-

4432 ereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worth while, and government which retains adequate authority to secure the business and good order of society. This principle of harmonizing the constitutional prohibition of the necessary residuum of state power has had progressive recognition in the 4433 decisions of this court. With a growing recognition of public needs and the relation of individual rights to public security, the court has sought to prevent the perversion of the clause through its use as an instrument to throttle the capacity of the states to protect their fundamental interests. The principle of this development is, as we have seen, that the reservation of the reasonable exercise of the protective power of the state is read into all contracts.

4434 Respecting the due process clause and the requirement of notice and hearing, the Fourteenth Amendment to the Constitution of the United States provides that no state shall deprive any person of life, liberty or property without due process of law. In *People v. Broad*, 216 California 1, our Supreme Court has said:

"The rule is well settled that to constitute due process of law in regard to the taking of property the statute should give the parties interested

4435 some adequate remedy for the vindication of their rights, and it has accordingly been held that to constitute due process the statute itself must provide for notice of the time and place of hearing where the parties may present in a regular and orderly manner issues of law and fact."

The above case involved a statute which decreed a forfeiture of property found to be used in the commission of a public offense. Likewise, the case of *Teck v. Anderson*, 57 California 251, 4436 cited by counsel, involved the statute prescribing a forfeiture of specific property used in the commission of a public offense, and wherein it was held that the confiscation thereof without judicial hearing and judgment, and without due notice was in violation of the due process inhibition.

The case of *Modern Loan Company v. Police Court*, 12 California Appellate 582, cited by counsel, involved the constitutionality of search warrant provision in the Penal Code; and therein 4437 the court held that one who is in possession of property under a claim of right cannot be deprived of the possession without due process of law; and that to constitute due process of law the statute must provide for notice of a time and place of hearing.

The case of *H. Moffett Co. v. Hecky*, 68 Cal. App. 35, also cited, involved the question of the constitutionality of the Cattle Inspection Act of 1917, which authorized the director of agricul-

4438 ture to inspect cattle in course of shipment, and to take all found by him not to belong to the shipper; such cattle to be thereafter dealt with in accordance with the rules of the Board of Agriculture in such case made. It was held that this was void under the due process clause, for taking, for lack of provision for notice and hearing.

In the case of Matter of Lambert, 134 Cal. 626, the Supreme Court declared the insanity law 4439 of 1897 void under the due process clause, for failure therein to provide for notice to the person charged with insanity, and opportunity to be heard.

All of the foregoing California cases were cited in support of the contention herein made that section 1043 of the Insurance Code was void for failure therein to provide for notice and hearing.

4440 It will be first noted that none of these cases involved a statute enacted under the police power; and, second, that each of the statutes involved and condemned provided for direct taking of the property from the owner or from the possession of one who held the same under claim of right and title.

The Fifth Amendment to the Constitution of the United States contains the same due process clause as appears in the Fourteenth Amendment, but therein limited to apply to acts of Congress,

4441 as distinguished from acts of the state legislatures.

In the *Legal Tender* cases, 12 Wallis 457, at page 551, the Supreme Court of the United States, in referring to the Fifth Amendment, said:

4442 "That provision has always been understood as referring only to a direct appropriation and not to consequential injuries resulting from the exercise of lawful power. It has never been supposed to have any bearing upon or inhibit laws that indirectly work harm and loss to individuals."

Reminding ourselves again that the act here in question is of a remedial nature, I now quote from *Gibbs v. Zimmerman*, 290 U. S. 326, wherein the Supreme Court of the United States declared:

4443 "Although a vested cause of action is property, and is protected from arbitrary interference (*Pritchard v. Norton*, 106 U. S. 124, 132), the appellant has no property in the constitutional sense in any particular form of remedy. All that he is guaranteed under the Fourteenth Amendment is the preservation of his substantial right to redress by some effective procedure."

In *Doty v. Love*, 295 U. S. 64, the same court announced that the Constitution of the United States does not confer upon depositors in a bank

4444 seized by the state official the right to liquidation solely in the hands of such official, but that such may be substituted by a plan or reorganization by the bank itself, through its reorganized form.

In *Hebbis v. New York*, 291 U. S. 502, at page 525, the Supreme Court of the United States said:

4445 "The Fifth Amendment in the field of federal activity, and the Fourteenth as respects states' action, do not prohibit governmental regulation for the public's welfare. They merely condition the exertion of the admitted power by securing that the end shall be accomplished by methods consistent with due process; and a guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious; and that the means selected shall have a real and substantial relation to the object sought to be attained."

4446 In *People v. Title & Mortgage Guaranty Company*, 264 New York 69, the court of appeal in New York, in dealing with a statute which authorized the appointment of the insurance superintendent as rehabilitator, in the first instance—as distinguished from conservator as in our statute—stated:

"A statute may be unconstitutional which, without notice to an owner, bars reclamation by the owner of property in the hands of a receiver or liquidator; but this statute has no such effect.

4447 When the administration of property is the duty and part of the business of a corporation taken over by a liquidator or rehabilitator, then the continued administration by him is merely an incident of the liquidation or rehabilitation proceeding, and deprives those interested in such property of no rights. Only where there is a deprivation of rights is notice and opportunity to be heard in opposition necessary."

4448 I now quote from an Iowa case, *Peverill v. Board of Supervisors*, 208 Iowa 94, also reported in 222 N. W. 535, because the language used in this opinion is illuminating, and better expresses the views therein stated than I could with my own choice of language:

4449 "This presents a question of where the Legislature enacts a statute under the police power, whether in so doing it is bound by the rule of due process to the extent of requiring the provisions for notice and opportunity to be heard. Is the due process rule a limitation on the right to exercise the police power? The due process rule is not confined alone to our system of jurisprudence, but it is common to thoughtful men everywhere. The heart of it lies in the thought that a right to present defenses must precede judgment and necessarily involve therein the right of notice and opportunity to be heard is the very foundation of the doctrine."

4450 The court then reviews many of the decisions of the Supreme Court of the United States on that subject, then in existence, this decision having been rendered, I think in 1928, and then proceeds:

“The conclusion we draw from the review of the decisions of the United States is that the due process rule is not a limitation upon the right of the state to exercise its police power unless the
4451 attempted exercise of such power is arbitrary or unreasonable or an improper use of such power. This seems the necessary conclusion from those cases.”

In the case of *Doty v. Love*, 295 U. S. 64, the due process clause was considered in connection with a statute of Mississippi providing for a reorganization of banks in process of liquidation under the bank superintendent. The statute made
4452 no provision for notice upon anybody, but notice was actually given to a large number of depositors. The statute required the plan of reopening a bank in liquidation to be submitted by the bank superintendent to the chancery court for approval if found to be reasonable and just. Upon the approval of such a plan, assenting and non-assenting creditors shall be required to accept payment in accordance with its terms. Upon

4453 appeal by non-assenting creditors; Mr. Justice Cardoza stated:

“If we look to the surface of the statute and no further there is not even colorable basis for the argument that the Constitution is infringed. All the statute does upon its face is to change the method of liquidation. The assets of the business are to be devoted without impairment or diversion to the payment of the debts. In the discretion of the court of chancery a reopened bank is
4454 to take the place of the state superintendent for the purpose of gathering in the assets and discharging liabilities. The substitution may not be made unless the court is satisfied that the reopened bank is solvent and able to satisfy the debts to be assumed. Payment of the creditors is still the end to be attained and resumption of business a means and nothing more.”

“Finally,” the court goes on to say, “the appel-
4455 lants say that proceedings in a court of chancery are void for insufficient notice to the depositors and others. A sufficient answer is that the appellants appeared generally and were fully heard upon the merits.”

It is generally accepted as law that the due process clause is not valid because discretionary power is vested in an administrative officer, such officer may within proper limitations exercise discretion, find facts and exercise judgment, and boards exercising administrative functions may

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4456 promulgate and adopt rules and regulations.

Legislatures may, within their police power, regulate and control institutions affected with a public interest and the power is broad enough to authorize seizure of such institutions upon the judgment of the supervising official that it is solvent without a hearing and a determination in advance by a court and to proceed to liquidate its affairs subject, however, to the right of an appeal to the court by the parties in interest.

4457. The supervising officer who takes over an insolvent institution represents and acts for the institution and its stockholders and creditors as well. He is the state officer designated for such purposes. When he approves or presents a rehabilitation or reorganization or reinsurance agreement for approval by the court he is acting for the institution and its stockholders and policyholders and creditors. He is presumed to be an impartial agent for that purpose and to act fairly,

4458 impartially and justly until it is shown to the contrary. The action of such administrative officer is not a finality. The court of chancery is at all times open to any interested party to test the legality of his acts and to inquire into the fairness and regularity thereof, and to prevent unreasonable and arbitrary action on his part. The jurisdiction of a court of chancery to give approval to settlements of such officers or of receivers acting in a similar capacity has always existed, and those who enter into contractual re-

4459 lations with the institution involved were charge-
able with notice of that power and became sub-
ject to its exercise in the making of such con-
tracts.

In the case of *People v. Title & Mortgage Guaranty Company*, 264 New York 269, the New York Court of Appeals, which is the highest court of that state, said:

4460 "The prohibition contained in section 10 of article 1 of the Constitution of the United States that no state shall pass any law impairing the obligation of contracts like the broader prohibition contained in the Fourteenth Amendment that no state shall deprive any person of life, liberty or property without due process of law, is not an absolute one and is not to be read with literal exactness like a mathematical formula."

Citing *Home Building & Loan Association v. Blaisdell*, 290 U. S. 396.
4461

"No unchanging yardstick can be fastened applicable at all times and under all circumstances by which the validity of each statute may be measured and determined. Every case must be determined upon its own circumstances. Legislation which impairs the obligation of a contract or otherwise deprives a person of his property can be sustained only when enacted for the promotion of the general good of the public, the protection of the lives, health, morals, comfort and

4462 general welfare of the people, and when the means adopted to secure that end are reasonable. Both the end sought and the means adopted must be legitimate. That is within the scope of the reserve power of the statute construed in harmony with the constitutional limitation on that power."

4463 From these general principles and rules and from these excerpts from adjudicated cases it must be manifest that sections 1011 and 1043 of the Insurance Code do not violate the impairment clause in the national and state constitutions, nor does section 1043 fall within the prohibition of the due process clause for lack therein of provision for notice and hearing. On its face it purports to take nobody's property. On its face it is simply another remedy furnished by the Legislature, in the process of reorganizing, restoring or liquidating insolvent or afflicted corporations whose business is affected with a public interest.

4464 Measured under these authorities, the plan proposed by the Commissioner contains within its provisions none which I have been able to find which are in conflict with the provisions of either of these constitutional provisions. None such have been called to my attention with that degree of certainty which makes it manifest that there is such a conflict; and my own study and review of the plan, in the light of these authorities, has convinced me that there is no ground for declar-

4465 ing that the plan does violate any of the constitutional provisions.

These conclusions dispose likewise, in addition to what I have previously said, of the charge that the proposed transfer of assets would constitute a fraudulent conveyance. If this court has the lawful power to approve the plan of rehabilitation, as I have indicated it does possess, then the proposed transfer of assets certainly would not be a fraudulent conveyance, under the definitions 4466 of sections 3439 and 3442 of the Civil Code.

Having decided these four questions, we are now brought to a decision of the question whether the proposed plan, thus found to be free of legal and constitutional objections, is reasonable, just and equitable, and should therefore be approved, notwithstanding the evidence relating to the Giannini offer, which is in turn presented to the court for approval and adoption. This question must, in turn, await answer until it is 4467 first determined what are the powers of this court in this proceeding under the Insurance Code.

Before entering upon that subject it is well to get clearly in mind what is before this court by way of past history of legislation in respect to the entry by the state into the control and management and supervision of business affected with a public interest; particularly, of course, with reference to the history respecting life insurance business.

4468 In 1860 the Legislature of this state passed an act providing for the appointment or the creation of the office of insurance commissioner, and vested in him visitorial powers, and the power to grant and revoke licenses of authority to do business to insurance companies; and granted to him the further right, after ascertaining that a company was insolvent, upon examination, to require the attorney general to bring an action to dissolve the company; nothing more. That act became
4469 part of the codes in 1872.

From that time there has been a steadily progressive advance by the state not only in respect to the supervision and control of life insurance business and companies, but of banks, building and loan associations, and numerous others. There has been a steady progress of deeper entry by the state into those affairs and the field of operation of the state agents has been constantly enlarged.

4470 We thus learn, from that history, that presently the state added to the authority of the insurance commissioner, the banking commissioner, the building & loan commissioner, the right to liquidate. Then, later, the provision for the commencement of proceedings was changed so that, instead of the state officer being required to apply to the court to be appointed and given in charge of the company's business, he was given authority to go and take possession without any court order. However, he was required, in that con-

4471 nection, to immediately thereafter file his return with the Superior Court; and thereafter the proceeding, under limitations, progressed in the Superior Court.

I think it was in respect to the banking laws that it was first provided that the bank superintendent should, without notice or hearing, go into a bank and take possession of it and run it, for the purpose of liquidation. That was then extended to the commissioner in charge of building and loan associations. It happened that I tried the first case that arose under that new provision, where the authority of the building and loan commissioner to step in and take possession without an order of court was questioned. It is now settled, and nobody questions it. Then it was extended to the insurance commissioner. He was given the right to step in and take possession and run the business; and if he could not, within a reasonable time, cure the cause of the trouble, so that he could restore possession to the insurance company, he had the right to apply for an order of liquidation, and liquidate.

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—Then, in 1935, the Legislature added another remedy; that is, the remedy of rehabilitation—something new in California; and it was something new, under that name, at least, anywhere in this country, until 1932, when the New York Legislature enacted such a law.

4474 In 1935 the California Legislature copied the law in principle, into section 1043 of our Insurance Code. It is under that section that the Insurance Commissioner, as conservator, has chosen to act, as reflected by his petition here awaiting disposition.

4475 The Insurance Commissioner, as conservator, having decided to rehabilitate the Pacific Mutual Life Insurance Company of California, and having, pursuant to the statute, filed his petition that the plan he had made should be by this court approved, we are confronted with an offer presented by Mr. Giannini which, to all intents and purposes, is an offer to purchase and assume—necessarily under a liquidation process.

4476 Thus we have the two different propositions confronting us: The Commissioner of the state, as conservator, petitioning that a plan of rehabilitation be approved; and interveners who oppose that plan proposing and petitioning that a liquidation be had and a sale of the assets made to this bidder.

That brings us squarely to the proposition stated a moment ago as question No. 5 herein: What are the powers or the limitation on the powers of the court when confronted with the situation on this record?

We will presently see with the aid of the authorities I am about to quote.

4477 In the case of *Richardson v. Superior Court*,
138 Cal. App. at page 389, in an application for
a writ of prohibition brought by the building and
loan commissioner to prevent the Superior Court
from appointing a receiver to take over the build-
ing and loan association previously taken by the
commissioner under the provisions of the Build-
ing and Loan Act, the question of jurisdiction of
the Superior Court and the limitations which may
be found to exist staying the exercise of judicial
4478 power where such exercise of judicial power
would interfere with administrative authority cre-
ated by statute, was presented and considered and
therein the court held that the assertion of au-
thority by the court to entertain an attack upon
the administration of affairs of a building and
loan corporation by the commissioner who had
taken it over under the act, which is similar to
the one here involved, and a proceeding to re-
move him from his office so far as the corpora-
4479 tion is concerned and to compel him to surrender
the entire business to the court would be an as-
sumption of jurisdiction which, under the exist-
ing laws, the Superior Court with all its equity
powers does not possess. In that same case the
late Mr. Justice Conrey, then presiding justice of
the District Court of Appeal, later justice of the
Supreme Court, said:

“While it thus appears that the authority of
the commissioner over the property and business
affairs of the association when in his custody is

4480 subject to such prescribed judicial review and control, the principal characteristics of his position as administrator are those of a public officer charged with a statutory duty which for reasons of public policy has been made to include a trust in private property. The statute constitutes a declaration of policy by the state to the effect that the protection of investments in building and loan associations is a special subject of care by the state and that the measures prescribed in the 4481 statute are necessary measures in relation to the welfare of the public."

In *Mitchell v. Taylor*, 3 Cal. (2d) 217, in considering the question whether the insurance commissioner who had been appointed liquidator of an insurance company was exempt from payment of certain fees under the provisions of section 4295 of the Political Code, that:

4482 "The state or any public officer acting in his official capacity on behalf of the state shall not be required to pay or deposit any fee."

It was contended that the insurance commissioner in taking charge of the business of an insolvent company acts as the trustee of a private trust on behalf of the private persons who are the ultimate owners of the trust property. The court said:

"We are unable to agree with the contention which ignores the basic purpose of the law under which the office of insurance commissioner is

4483 created. That law provides that when there is insolvency or such situation as would make the further transaction of business by the insurer hazardous to its policyholders, its creditors, or to the public, the commissioner with the aid of the attorney general shall institute a proceeding in the Superior Court placing him in possession of the company's property and seeking such other order as the interest of the policyholders, creditors and public may require."

4484 Citing Deering General Laws 1931 at 3739, section 2, this decision having been rendered prior to the enactment of the present code.

"Other provisions give him wide powers to carry out this purpose. There can be no doubt that the statute was enacted under the police power for a purpose connected with the public interest. That the Legislature has declared the liquidation of insolvent insurance companies a matter in which the state has an interest and that consequently it has made provision for a state officer to protect and advance that interest. The insurance commissioner is not a mere private trustee or receiver wholly dependent on the appointing court for his power, he is a state officer performing duties enjoined upon him by statute and in every performance he acts on behalf of the state."

4485 In the case of the State v. Superior Court, 97 Pacific, reported at 774, cited by counsel for the

4486 Washington insurance commissioner, the Supreme Court of the state of Washington held by a five to four decision that the law relating to the appointment of the director of efficiency, a state officer, as receiver for savings and loan associations for the sole purpose of dissolution of the company did not repeal the act granting the Superior Court exclusive authority to appoint a receiver, and that the statute there involved did not create a statutory receiver. With this the 4487 four dissenting justices did not agree and expressed themselves in the following language:

"My view is that the statute here in question contemplates a mixture of both. That is, the state names a receiver and requires the court to appoint as such receiver the person named, and that the interference of the court with the administration thereafter can only be where the receiver himself comes into court and seeks direction as to some particular question or where 4488 some one feeling aggrieved at the action of the receiver may come into court and there have his complaint determined."

This case was cited as authority on the point that this court, as a court of equity, retains its full power to control the action of the insurance commissioner in the same manner as that it could control the action of a receiver. I call special attention to the fact that the statute construed by the Supreme Court of Washington was lim-

4489 ited solely to the appointment of the efficiency director for the purpose of dissolution of a company. He had no other power at all. Naturally the full equity powers of the court with respect to receivership survived, just as it did in California in the early days before we got our new provision. I quote this language of the dissenters in that case which I fully believe would have been joined in by the majority if it had been a case like this where there was a statutory receiver because it clearly expresses the trend of thought as to what the Legislature meant when it granted to the state official the power to use his discretion in how to handle the business of a company taken over.

In the case of *Gallen v. Burdick*, 173 N. Y. S. 456, in construing a New York statute of almost identical character as the California act, the New York court of first instance stated:

4491 "The superintendent of insurance is, in effect, a statutory receiver. His power has been upheld in the Court of Appeals, *People by Van Schaick v. Title & Mortgage Guaranty Company of Buffalo*, 264 N. Y. 69. The court there said:

"The superintendent becomes a statutory receiver. The property of the corporation is brought into the protective arm of the law, and the receiver is subject to directions of the court, except in so far as discretionary power is vested by the Legislature in him."

4492 In the case of *In re National Surety Company*, 268 N. Y. S. 88, at page 95, the New York court declared:

"The Legislature had the power to permit the superintendent of insurance to liquidate or rehabilitate such company; but the extent to which that power shall be used must be supervised by the courts. The statute places a great responsibility upon both the superintendent of insurance and the courts, and requires the exercise of
4493 proper discretion. However, any abuse of power may be checked by an application to the court."

In the case of *In re Globe v. Rutgers Fire Insurance Company*, 266 N. Y. S. 29, the New York court stated:

"Ordinarily the court would be constrained to adopt the views of the superintendent of insurance, who has made a very detailed investigation of the insurer's affairs. The court has great confidence in his judgment, and recognizes that
4494 the recommendations and views of an administrative officer, charged with the performance of statutory duties, are entitled to great weight and careful consideration, and are not to be disregarded or brushed aside except for cogent reasons."

In the case of *In re National Surety Company*, at 288 N. Y. S. 1014, on an appeal from an order made by the lower court disapproving the insurance superintendent's acceptance of a highest bid

4495 for stock of a new company organized under a rehabilitation plan, and which order directed him to accept an amended bid—not on the ground that the bid accepted was inadequate, but on the ground that acceptance of the amended bid was to the best interests of the estate of the company and rehabilitation, the New York court had this to say:

4496 “Instead of approving or disapproving the acceptance of bid of appellant, the court entered the order now under review. We fail to find anything in section 421 of the Insurance Law which gave the court the right to make an order, this unusual order. The result of what the court has done was to substitute its judgment for that of the superintendent’s. Such a procedure was not even contemplated by the Legislature in enacting this particular statute.”

4497 It is a well-settled rule that the statute of another state which has been construed by the courts of that jurisdiction, when adopted in California it will be presumed to have been adopted with the construction so given it, unless the language is changed somewhat to express a different intent. In construing such a statute, the decisions of the courts of the state from which the statute was derived are entitled to great consideration, and their interpretation of the statute will ordinarily be followed.

4498 There is another rule, well-known, which is analogous to this, namely, that the exercise by a trial court of discretionary powers will not be reviewed or disturbed on appeal except for an abuse of discretion. Unless the appellate court is able to say that a clear abuse of discretion is made to appear, it will not substitute its opinion, and thereby divest the trial court of the discretionary power reposed in it. And it has been repeatedly held, until it is never challenged, that, 4499 no court will by mandamus seek to compel a public official to perform a duty of his office in any particular way where the statute gives to that official the right to use his discretion. Neither will the court prohibit any public official who is given the power to use his discretion under the statute from exercising that discretion as he sees fit, unless there is a showing, in each of these cases that, in the exercise, or the attempted exercise of the power, the official has abused, misused 4500 that power of discretion.

Here we have a case where the Legislature has vested in the insurance commissioner, as conservator, the power to conduct the business of the affected life insurance company. It has vested in him the power to determine, in the first instance, under the exercise of discretion, how he shall conduct that business. It has given to him this new and additional authority, to use the means of rehabilitation in connection with the conduct of that business, to the end that the affairs of the

4501 company may be restored to a state of solvency and the property and assets of the company be transferred and possession thereof delivered to them for the continuation of the regular business.

I can see no escape from the conclusion that the Legislature intended to turn over to the insurance-commissioner the control and the management of a life insurance company found to be in the situation in which this company was found; and the right to undertake to rehabilitate
4502 that company, rather than liquidate it; and that, in so doing, the Legislature has put it out of the power of any court to deny him the free exercise of that power, as long as he is not abusing it.

That leaves here, then, just the one question: Can it be said that there is here in this evidence, that within its pages there is contained in this rehabilitation plan proof that it is unfair, unjust or unreasonable, arbitrary or capricious?

4503 We sat here for many, many days listening to the testimony of men who knew whereof they spoke. The Commissioner himself has demonstrated, while on the witness stand as a witness, under the barrage of questions propounded to him, that he need not rely, nor need the court rely, on the presumption that he is acting fairly, or that he possesses the skill and knowledge which entitles his views and his opinions to great weight. He demonstrated that he is familiar with the life insurance business, and he has di-

4504 rectly stated, without qualification, that, in his opinion, this plan will work, and will effect a rehabilitation of the Pacific Mutual Life Insurance Company of California. In that opinion he was substantiated by the testimony of Mr. Breiby. We must all concede, one to the other, that in such obscure matters as pertain to the actuarial aspect of the life insurance business, we know very little; so little that our own personal judgment is worthless. So we have to look to those
4505 who do know. The best officials of the best life insurance companies in the world do not depend on their own judgment in matters affecting actuarial work. They depend and rest blindly upon the opinions of their actuaries. The only judgment they exercise is in their choice of their actuaries. Mr. Breiby is one who has demonstrated that he knows whereof he speaks. His opinion is that this contract is fair, from the insurance point of view it is just and equitable;
4506 he says it will work. That opinion, that view stands practically unchallenged. This court would be arrogating an authority and a power entirely inconsistent with the duties of a court if it sought to set up its puny judgment against that of men like the Insurance Commission and Mr. Breiby. The court must take those opinions as true. After all, does the proposed plan of the Commissioner discriminate wrongly against anybody? The only difference between the plan of rehabilitation and the plan of reinsurance in liqui-

4507 dation is that the non-can active policyholders
will get at the beginning less than under the
Giannini plan. Mr. Breiby testified that under
the set-up taken from the company's books that
at the end of 1937 the company would be able to
pay that group in the lowest bracket of 20 per
cent over 50 per cent. The Giannini offer starts
off with 50 per cent; the Giannini offer also con-
tains the element of cash, new money. We
4508 shouldn't let that blind us to the merits of the
plan adopted or selected by the officer placed in
charge of this institution. New money tempts
one instantly to say "That is the better plan."
Undoubtedly throughout the public and those in-
terested in these policies the impression will first
be that it is the better plan. If we who have
been here engaged in this investigation now for
nine weeks cannot definitely decide which is the
better plan, it would be well for those on the out-
side who know very little not to make any de-
4509 cision at all. Furthermore, it is not necessary
that this court attempt to weigh one against the
other. I recognize the purpose for which the
Giannini plan was offered, a commendable public
service offer, given in utmost good faith, accepted
as a matter of proof here of the purpose and in-
tent of those who made that offer and are back-
ing it, those who support it here among the inter-
veners seeking the best way to protect life insur-
ance and those who have policies in this particu-
lar life insurance company. On the other hand,

4510 the plan of the Commissioner chosen by him, presented to the court for its approval, is shown by the proof to be workable and that it is prepared and presented for the purpose for which the Commissioner was appointed, is fully within the purview and intent of the legislation enacted in 1935.

Now, let me say this: All of the proceedings are predicated upon the proposition that the Pacific Mutual Life Insurance Company of California is insolvent and that it would be hazardous to the public and policyholders to permit it to further continue business. I have gathered from the evidence in this case a firm conviction that the Pacific Mutual Life Insurance Company of California is not stricken by any serious or ruinous condition. In the commercial sense of the word it is not insolvent; it was able to meet its obligations as they fell due up to the time the Commissioner took it over and would have been so able for years in advance had it not been taken over, but the law has prescribed certain standards of reserves to be set up for the protection of the public who deal with life insurance companies. That standard applied by the State Commissioner in the exercise of his duty revealed the fact last spring that the reserves were inadequate; therefore, under this artificial definition of in-

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4513 solvency the company was insolvent, and being insolvent in that sense, of course it would be hazardous to permit it to continue its business, and it was the duty of the Commissioner to take it over. A company that has existed for sixty-eight years, developed a reputation of being a giant of insurance in the West, \$600,000,000.00 of insurance written, 300,000 policyholders, 3800 stockholders, sixty or seventy general agents scattered throughout the country, with assets of a tangible nature exceeding \$215,000,000.00, with assets of an intangible nature, such as good will and specially the organized agency force, of many more millions, certainly is not an ailing institution; it is not liable to collapse. In order to restore it to those standards which the law prescribes, the Commissioner had to take it over, and to the Commissioner was given the power to
4514 conduct its business and to rehabilitate, if possible; he has chosen to rehabilitate. I find no abuse of discretion at all on his part in adopting that course. I have a firm feeling of conviction in my mind that this plan of his will succeed. The policyholders will want it to succeed; and when you stop to consider that there is a mere bagatelle of those holding policies that will ever suffer at all even temporarily, as provided, it is
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4516 bound to result that substantially all policyholders
will want it to succeed. The Commissioner has
shown that already there has been a saving of
~~half~~ a million dollars per annum in the overhead
of this company. That is cited simply as evi-
dence of what good a state can do when it steps
in and takes over. Many other economies can be
practiced, better methods adopted. Under the
plan it will be under the supervision of the state
4517 ~~original~~ at all times, and that means the super-
vision of the state, and to relegate it to its
farthest extremity, that means that the people of
the state of California are conducting that busi-
ness under the authority of those decisions which
grant to the Insurance Commissioner the discre-
tion of adopting the method by him considered to
be the best, and that method here being this pro-
posed plan of rehabilitation as evidenced in the
4518 concrete form by this proposed contract ready to
be executed. It follows that it is the duty of this
court to approve the plan and to quote a classic:

"The law allows it and the court don't grant
it."

The motion made by Mr. Lee for the Tilton
group of interveners to discharge the order to
show cause and that the conservator's plan be not
approved will be denied. The same motion made

4519 by Mr. Dottenheim on behalf of the Hall and McManus group will be denied.

The motion made by Mr. Overton to dismiss the proceedings will be denied.

The prayer of Mr. Neblett, intervener, for an order of liquidation, will be denied.

The petition of the Commissioner as conservator for the approval of the plan and agreement 4520 will be granted.

The Attorney General will prepare appropriate forms of order.

Mr. Lee: Findings and decree, I take it?

The Court: No findings and no decree.

Mr. Lee: On behalf of the E. B. Tilton respondents a demand for special findings is hereby made on the issue joined by the answer of said respondents. Is that request denied, Your Honor? 4521

The Court: Yes.

Mr. Lawler: We ask for an exception to be entered on behalf of the parties represented by Mr. Judson and myself.

The Court: Very well.

Mr. Lee: May an exception be noted also on behalf of the Tilton group? I think the order

4522 should provide an exception is reserved to all aggrieved parties, which is the federal practice, as Your Honor is aware of.

The Court: Do all parties here aggrieved desire exceptions noted?

Mr. Dottenheim: I wish mine to be noted, Your Honor.

4523 Mr. Doherty: I don't know of any procedure requiring it, but from the standpoint of safety I wish Your Honor would note on behalf of those whom I represent.

Mr. Lee: I think it should be noted for all those aggrieved.

The Court: Very well, an exception is noted on the record by all parties feeling themselves aggrieved.

Mr. Lee: May it be included in the order, 4524 which is the usual practice—

Mr. Flynn: I think the record itself should note the exception, and I don't believe that is under our practice a part of the order.

The Court: The order is simply the order which is on the minutes and it is in the reporter's record.

(Adjournment.)

L. A. No. 16182. In Bank. December 7, 1937

SAMUEL L. CARPENTER, JR., Insurance Commissioner of the
State of California, Petitioner and Respondent,

v.

THE PACIFIC MUTUAL LIFE INSURANCE COMPANY OF CALI-
FORNIA (a Corporation), Respondent; William H. Neblett,
Vernon Bettin and William George Dickinson, Appellants
and Respondents; Charles Ross Cooper et al., Respond-
ents

L. A. No. 16222. In Bank. December 7, 1937

SAMUEL L. CARPENTER, JR., Insurance Commissioner of the
State of California, Petitioner and Respondent,

v.

THE PACIFIC MUTUAL LIFE INSURANCE COMPANY OF CALI-
FORNIA (a Corporation), Respondent; Alfred F. Mac-
Donald, Appellant and Respondent; Charles Ross Cooper
et al., Respondents

[1] Appeal—Briefs—Motion to Strike.—An appellate court has the power to strike from its files a brief or other document containing disrespectful, scandalous or abusive language directed against the courts, officials or litigants, or to take such other action as the circumstances may require.

[2] Id.—Briefs—Issues—Motion to Strike.—In this proceeding for approval of a plan of rehabilitation of an insurance company proposed by the state insurance commissioner; although the brief of one appellant made many charges and insinuations which could be supported, if at all, only by reference to the evidence which was not included in the record on appeal, and many of the charges were couched in highly intemperate and improper language, which under no circumstances of the case could be sanctioned, where the issues involved were of widespread in-

terest and public importance, and several of the contentions made could be properly considered only by a reference to the challenged brief, the ends of justice would best be served by refusing to strike said brief from the files, and a motion to strike was denied.

[3] Insurance — Insurance Carriers — Reorganization — Procedure — Orders — Appeal. — In this proceeding seeking approval of a plan of rehabilitation of an insurance company proposed by a state insurance commissioner, the filing of the petition for approval of the rehabilitation plan did not constitute an institution of a new proceeding separate and apart from the steps theretofore taken by which the insurance company was taken over by the insurance commissioner, and on appeal from the order approving the plan submitted by the commissioner the judgment roll, and therefore the proper appeal record, started with the petitions and orders first filed and made, and orders made prior to the order from which the appeal was taken were subject to review.

[4] Id. — Disqualification of Judges. — Ownership of a life insurance policy, when such ownership gives the judge an interest in the funds of the insurance company, disqualifies such judge from participating in or deciding any cause or proceeding to which the insurance company is a party; and in such proceeding, all orders made by a judge who held a policy of life insurance in the insolvent insurance company were void by reason of his disqualification.

[5] Id. — Disqualification of Judges — Orders. — In such proceeding, although all orders made by one judge who held a policy of life insurance in the insolvent company were void, this in no way affected the validity of any subsequent proceedings before another judge who was not disqualified where not only were all the facts performed by the insurance commissioner ratified, confirmed and approved by valid orders after a full hearing by the judge not disqualified, but the insurance commissioner was entitled under the Insurance Code to take possession of the assets of an insolvent insurance company without a prior court order.

[6] Id. — Appeal — Judgment Roll — Findings — Waiver. — In such proceeding, even if it were to be assumed that the proceeding was one in which findings were required, the re-

quirement was one which might be waived, and where the appeal was taken on the judgment roll, it was to be assumed, in the absence of a proper record showing the contrary, in support of the judgment, that such requirement was waived.

[7] Id.—Appeal—Findings—Record.—In such proceeding, where the appeal was taken on the judgment roll alone [fol. 1510] and a purported colloquy between counsel and the trial judge following the oral opinion of the trial judge, printed at the end of the last volume of the transcript, was not properly made a part of the appeal record, and the purported comments were not certified, appearing in the transcript after the formal certification by the clerk, such comments and oral opinion were not a proper part of the record and could not be considered, and the defect could not be cured by an affidavit of an attorney, attached to a brief, to the effect that the opinion and conversation were copied from a certified copy of the court reporter's transcript.

[8] Id.—Special Proceedings—Findings.—When a statute dealing with a particular special proceeding is silent as to the requirement of findings, none is required; and in such proceeding, where the portions of the Insurance Code providing for the reorganization and rehabilitation of insolvent insurance companies contained no provision requiring findings in such a special proceeding, no duty rested upon the trial court to make findings of fact.

[9] Id.—Public Interest—Impairment of Contract—Police Power—Constitutional Law.—The business of insurance is affected with a public interest and the state has an important and vital interest in the liquidation or reorganization of such a business, and neither the company nor a policy holder has the inviolate rights that characterize private contracts, but the contract of the policy holder is subject to the reasonable exercise of the state's police power, the only restriction on the exercise of which is that the state's action shall be reasonably related to the public interest and shall not be arbitrary or improperly discriminatory.

[10] Id.—Police Power — Insurance Carriers — Insolvency.—Under the statutory plan embodied in the Insurance Code, the state, acting under and within its police power, has provided that the insurance commissioner when

an insurance company is in financial difficulties shall first be appointed by the court as conservator, and as such it is his duty to operate the company and try to remove the causes leading to its difficulties, but if this cannot be done he then must attempt to rehabilitate the business of the company as conservator or regulator by entering into, with the court's approval, either reinsuring or rehabilitation agreements, and only if this cannot be done and further efforts would be futile should resort be made to liquidation.

[11] Id.—Insurance Carriers—Reorganization—Insurance Code.—In such proceeding, the insurance commissioner had the power under the provisions of the Insurance Code, with the approval of the superior court, to effect a rehabilitation of the insolvent insurance company by the organization of a new insurance company and a transfer of the assets of the old company to the new company upon the conditions recommended by him and approved by the court, and there was no merit in the contention that the Insurance Code did not permit the rehabilitation of an insolvent company by the organization of a new company.

[12] Id.—Words and Phrases—Reinsurance.—In such proceeding, the contract by which the new company took over certain insurance risks of the old company and became substituted as insurer in the place and stead of the original insurer effected a "reinsurance" of the business of the old company, and there was no merit in the term "reinsurance" as used in the Insurance Code meant only that one company was to reinsure the risks of another, the latter remaining liable on the original risk.

[13] Id. — Contracts — Discrimination — Constitutional Law.—In such proceeding, where all policy holders, including the holders of life insurance policies and noncancellable accident and health policies, were given the right to consent to or reject the reorganization in so far as it affected them, and all those who rejected the plan were placed upon the same footing and were entitled to receive the liquidated value of his contract rights without reasonable delay, and the plan of reorganization submitted appeared from the record to be the best plan to bring about an effective reorganization, there was no merit in the contention that the reorganization plan was unlawfully discriminatory in that life

policy holders were taken into the plan on more liberal terms than non-can policy holders.

[14] Id.—Insurance Carriers—Insolvency—Fraudulent Conveyances.—In such proceeding, sections 3439 and 3442 of the Civil Code had no application, and where the transfer of assets by the insurance commissioner was made by him as such, and not by the involvent company to the newly organized company, with the full approval of the superior [fol. 1511] court, there was no merit in the contention that such transfer constituted a fraudulent conveyance in violation of said sections 3439 and 3442.

[15] Id.—Insurance Commissioner—Conveyances.—In such proceeding, the insurance commissioner, as conservator or liquidator, had the power with court approval to enter into rehabilitation agreements, and it was immaterial that he had not been validly appointed liquidator before making the conveyance to the new company.

[16] Id.—Insurance Carriers—Permits—Appeal—Judgment Roll.—In such proceeding, the insurance commissioner was not required to issue to himself a permit for the issuance of stock in the new company where courts approval of the issuance was contemplated and secured; furthermore, where the record on appeal failed to show that such permit, if one was necessary, was not secured, it was to be conclusively presumed that such permit was secured.

[17] Id.—Insurance Commissioner—Constitutional Law.—In such proceeding, the insurance commissioner, while subscribing to the stock in the new insurance company as conservator for the old company, did not, as a state officer, subscribe to the stock of the new company so as to make the state a stockholder and there was no merit in the contention that section 1043 of the Insurance Code and the plan as approved were in violation of section 13 of article XII of the Constitution, prohibiting the state from subscribing to the stock of any company, association or corporation.

[18] Id.—Insurance Carriers—Corporations—Names.—In such proceeding, while the new company was a stock company, where the new, as well as the old company was authorized to issue participating life policies as well as non-participating policies, and the record showed that the approved plan provided for the ultimate mutualization of the

company on certain designated conditions, and the word "mutual" was a part of the name of the old company, whether the facts justified the use of the term "mutual" in the new company's name was a question for the consideration of the trial court, and the contention that the use of such word in the name of the new company was misleading, illegal and fraudulent, in that the company was not a mutual company, could not be sustained.

[19] *Id.*—Issues—Appeal—Judgment Roll.—In such proceeding, where the appeal was taken on the judgment roll alone, and the different plans for reorganization submitted to the trial court were not included in the record on appeal, the appellate court could not determine the relative merits of any of the submitted plans, and the judgment of the trial court thereon was conclusive.

Appeal by certain respondents from an order of the Superior Court of Los Angeles County, Henry M. Willis, Judge, affirming a plan of rehabilitation of an insurance company proposed by the State Insurance Commissioner. Affirmed.

For Appellant and Respondent Alfred F. MacDonald—Alfred F. MacDonald, in propria persona.

For Appellant and Respondent William H. Neblett—William H. Neblett, in propria persona; R. Dean Warner, LeRoy B. Lorenz, E. Walter Guthrie, A. H. McCurdy.

For Appellants and Respondents Vernon Bettin and William George Dickinson—Bettin, Painter & Wait; Vernon Bettin, in propria persona.

For Respondent Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California—U. S. Webb, Attorney-General; John L. Flynn, Deputy Attorney-General; Shepard Mitchell, Mitchell Silberberg, Roth & Knupp and Peery Price, Frank L. Guarena.

For Respondent Pacific Mutual Life Insurance Company of California, a Corporation—O'Melveny, Tuller & Myers; Overton, Lyman & Plumb.

For Respondents Charles Ross Cooper et al.—Hugh K. McKevitt.

For Respondents Rupert B. Turnbull et al., for themselves and for other noncancellable Policyholders similarly [fol. 1512] situated and for Francis Adams for himself and

for other noneancellable Policyholders similarly situated—Rupert B. Turnbull.

For Respondents George W. Manierre and B. Robert Getts on their own behalf and on behalf of all similarly situated Policyholders—Manierre & Cuthbertson.

For Respondents E. B. Tilton et al.—Kenyon F. Lee.

For Respondents Marshall D. Hall and Joseph C. McManus on behalf of themselves and other holders of noncancellable Income policies—H. S. Dottenheim.

For Respondents Neil S. McCarthy on his own behalf, Ralph R. Huesman and Broadtown Investment Company, a Corporation—Neil S. McCarthy.

For Respondents Dr. Arthur B. Allen et al.—W. B. Etheridge.

For Respondents David Lynn Openshaw et al.—Delvy T. Walton.

For Respondent Henry B. Senn—Albert E. Coger.

For Respondent Herbert E. Freston—Herbert E. Freston, in propria persona.

For Respondents Robert J. Webb and Philip M. Klutznick for themselves and all other persons similarly situated—Jacob J. Lieberman, Aaron B. Rosenthal.

For Respondent B. Rabinowitz—Lawler & Felix.

For Respondent Roscoe R. Hess—Roscoe R. Hess, in propria persona; David R. Rubin.

For Respondents G. C. Parsons, J. A. Marvin and G. R. Snider et al., on behalf of themselves and all other holders of noncancellable policies, and as members of a Protective Committee for Holders of Noncancellable Income Policies—Chapman, Snider, Duke & Landis; Hiram W. Johnson, Jr., Frank P. Doherty.

For Respondents Austin O. Martin and Rex Hardy—Rex Hardy.

For Respondent William A. Sullivan, Insurance Commissioner of the State of Washington—Ivan Merrick.

For Respondent Arthur E. White—Arthur E. White, in propria persona.

For Respondents George I. Cochran et al.—Oscar Lawler, Harold Judson.

For Respondents William A. Beckett et al.—Shattuck, Davis & Story.

For Respondent Arthur D. Wunner—Paul Overton.

For Respondents C. N. Wesley et al.—Latham, Watkins & Bouchard.

For Respondents Wilbur G. Katz et al.—Bell, Boyd & Marshall; Newlin & Ashburn.

For Respondents Carl C. Katleman et al., for himself and all others similarly situated—Carl C. Katleman.

For Respondent Andrew J. Copp, Jr.—Andrew J. Copp, Jr., in propria persona.

For Respondent Ralph C. Hamlin—Garnet C. Rainey.

For Respondents Rowe Sanderson et al.—Chapman & Chapman.

For Respondents Robert Casamajor et al.—Hahn & Hahn.

For Respondent Ben S. Hunter—Ben S. Hunter, in propria persona.

For Respondents Clara M. Gannan et al.—M. W. Purcell. [fol. 1513] For Respondent John P. Oliver—John P. Oliver, in propria persona.

For Respondents Harold S. Cook et al.—Loeb, Walker & Loeb.

For Respondents Edwin Janss et al.—William M. Rains.

For Respondent E. A. Conway, Secretary of State of Louisiana—D. M. Ellison.

For Respondents Carroll C. Day, Harry C. Fabling, Joseph M. Gantz, Jack Paschall and Ralph J. Wetzel—John M. Cramer, Cosgrove & O'Neil.

For Respondents J. Parker Evans, on behalf of himself and all other holders of active life noncancellable income policies issued in the State of Alabama who may wish to join with him in the proceeding—A. A. Carmichael.

Amicus Curiae—Asa V. Call.

By the Court:

The above numbered appeals have been taken by the four named appellants, policyholders of the Pacific Mutual Life Insurance Company of California, from an order of the superior court in and for the county of Los Angeles, affirming a plan of rehabilitation of that company proposed by the state insurance commissioner pursuant to the provisions of section 1043 of the Insurance Code. (Stats. 1935, chap. 145; Deering's 1936 Supp. to Codes, Laws and Con. Amendments, Act No. 3748, p. 878).

In appeal L. A. No. 16182, and solely in connection with appellant Neblett, a motion of respondents Day, Fabling, Gantz, Paschall and Wetzel to strike the opening brief of

appellant Neblett from the files has been submitted to be decided with the cause on its merits. The motion is made on the ground that the challenged brief contains disrespectful and impertinent language directed against two judges of the trial court, against the attorney-general and his deputies, and against the insurance commissioner. Neither the insurance commissioner nor his counsel has joined in this motion.

Mr. Neblett is an attorney of long standing. In the court below he appeared by counsel, but on this appeal filed the challenged brief in *propria persona*. No useful purpose would be served in setting forth in detail the charges and objectionable matter found in the brief. The appeal is taken upon the judgment roll. None of the evidence introduced below is before us. Notwithstanding this fact appellant Neblett has made many charges and insinuations which could be supported, if at all, only by a reference to the evidence. While he contends that his charges are supported by the judgment roll, an examination of the record discloses that his contentions are not supported therein. If evidence was introduced below on these matters, and appellant Neblett desired to discuss them, he should have brought the record before us. This he has not done. The reference thereto in the brief, under the circumstances, is unjustified. Moreover, many of the charges are couched in highly intemperate and improper language which under no circumstances of the case could be sanctioned.

[1] There can be no doubt of the power of an appellate court to strike from its files a brief or other document containing disrespectful, scandalous, or abusive language, directed against the courts, officials, or litigants, or to take such other action as the circumstances may require. (*Estate of Randall*, 177 Cal. 363; *Gage v. Gunther*, 136 Cal. 338; *San Diego Water Co. v. San Diego*, 117 Cal. 556; *Sears v. Starbird*, 75 Cal. 91.) The experience of attorney Neblett [fol. 1514] has been such that it must be assumed that in presenting the improper argument to this court he was mindful of the significance of the language used. [2] In view of the widespread interest in, and the public importance of these causes, and in view of the fact that several of the contentions made can only be properly considered by a reference to the challenged brief, we think the ends of justice would best be served by denying the motion to strike.

As already stated, the appeals are upon the judgment roll. That record consists of over 1450 printed pages. In order to understand the contentions of the parties it is necessary to briefly summarize, chronologically, the contents of the judgment roll.

On July 22, 1936, there was filed in the court below by Samuel L. Carpenter, Jr., as insurance commissioner of the state of California, a petition entitled, "Application for Order Appointing Conservator". The petition recites that the Pacific Mutual Life Insurance Company of California is a California corporation engaged in the business of life, health and accident insurance in this and other states; that the commissioner, pursuant to his statutory duty, together with a number of insurance commissioners from other states, has made a convention examination of the business of the named insurance company as of December 31, 1935, a copy of the report being annexed to the petition; that such examination disclosed that the company's affairs are such that its further transaction of business would be hazardous to its policyholders, its creditors and to the public; that the company is insolvent within the meaning of that term as defined in the Insurance Code; that the hazardous and insolvent condition is principally caused by reason of the fact that for many years the company has issued a large number of noncancellable accident and health policies (hereafter referred to as non-can policies) at a rate inadequate to maintain the lawful reserves behind such policies; that it is necessary that the commissioner be authorized to immediately take possession of all the assets of the company for the purpose of conserving them in the interest of all the policyholders, creditors and stockholders and the public in general; that it is necessary that the commissioner be appointed conservator and that certain described restraining orders permitted by the Insurance Code be issued. It is further alleged that the insurance company has assets in excess of \$200,000,000 and has obligations on policies issued in excess of \$600,000,000, insuring the lives and health of policyholders in excess of 200,000 persons; that in addition the company has outstanding in excess of 75,000 accident and health policies; that because of the magnitude of the business it is proper as a matter of public policy that petitioner be authorized and directed to work out a rehabilitation and reinsurance plan to protect the interest of all. The attached

report of the convention examination discloses that as of December 31, 1935, there was a deficiency of approximately \$23,000,000 in the reserves behind the non-can policies, but that as to its life and other policies the company was in a sound position. The report likewise discloses that the difficulties of the company were largely caused by the sale of non-can policies at an inadequate premium rate.

On the same date the insurance company filed its appearance and consent that the cause might be immediately presented and tried, and likewise consenting to the relief prayed [fol. 1519] for by the commissioner. The matter was therefore presented to Judge Edmonds, then judge of the Los Angeles county superior court, and on July 22, 1936, he issued an order appointing Carpenter conservator of the company and granting the other orders prayed for in the petition.

Immediately thereafter, and on the same day, Carpenter filed an "Application for Order to Liquidate", reciting his appointment as conservator; that the company is insolvent; that further efforts to proceed as conservator would be futile; that the best interests of all concerned would best be served by appointing him liquidator; that in order to preserve the valuable intangible assets of the company, such as its good will and its agency organization, it is necessary that a rehabilitation and reinsurance plan be worked out. The commissioner prayed that he be appointed liquidator; that his title as conservator be confirmed; that he be authorized and directed to work out a rehabilitation and reinsurance plan; and that certain restraining orders be issued. The company having filed its consent to the making of the order, Judge Edmonds, on July 22, 1936, granted the petition appointing Carpenter liquidator and granting the other relief prayed for substantially in accordance with the prayer of the petition.

Immediately thereafter, and on the same day, there was filed by the commissioner a "Petition for Order Permitting, Approving, and Authorizing Rehabilitation, Sale and Transfer of Assets, and Reinsurance Plan and Agreement of the Pacific Mutual Life Insurance Company of California". The petition recites the steps already taken, and that, pursuant to the prior orders, the commissioner has worked out a rehabilitation and reinsurance plan, a copy of which is attached, and prays for its approval. The proposed plan

(which as slightly modified is the plan the approval of which is challenged on these appeals) so far as now pertinent, provided for the organization by the insurance commissioner of a new corporation to be known as the Pacific Mutual Life Insurance Company with a capital of \$1,000,000 consisting of 10,000 shares of the par value of \$100 each; for the commissioner to purchase all of the outstanding stock of this new company with assets of the old company for \$3,000,000; for petitioner to transfer to the new company substantially all of the other assets of the old company, excepting the stock of the new company; and for the new company to agree by contract to assume all the policies and obligations of the old company to the extent provided in the agreement. Under this proposed contract the new company was to agree to reinsure all life policies on exactly the same terms as such policies had been issued by the old company. Any life policyholder not assenting to the plan was to file a claim with the commissioner as liquidator of the old company, all allowed claims to be paid by the new company as limited in the agreement. As to non-can policyholders, the new company was to agree to assume and to reinsure their policies at existing premium rates, but disability payments on such policies were to be assumed on a basis of from 20 per cent to 90 per cent of the face of such policies depending upon the year of issue. Certain provisions were incorporated in the proposed agreement for future increased benefits to be paid to consenting non-can policyholders from certain profits of the new company. Nonconsenting non-can policyholders were to file claims with the commissioner as liquidator of the old company, all [fol. 1516] allowed claims to be assumed by the new company as provided in the agreement. The petition for the approval of this proposed plan of rehabilitation alleged that if it were approved the business formerly carried on by the old company could continue without interruption and the intangible assets such as good will and agency organization would, so far as possible, be preserved.

On July 22, 1936, after notice to the old company and the filing of its consent, and after finding that the plan was fair and equitable to all concerned, Judge Edmonds made an order permitting and approving the proposed plan and authorizing the execution of the proposed agreement and the transfer of the assets as therein provided.

On July 23, 1936, the commissioner petitioned for approval of an amendment to the rehabilitation plan, the court's jurisdiction having been retained in the order of July 22d. The amendment was approved and authorized by order of Judge Edmonds made and entered the same day.

On July 23, 1936, the new company filed a "Petition for Intervention and for Order to Show Cause". The petition recited the proceedings already taken, and the fact that pursuant to order of court the new company had been organized and the rehabilitation agreement executed. The new company petitioned for leave to intervene for the purpose of having its title to the assets of the old company and all the other steps already taken confirmed upon hearing of an order to show cause to all interested. On the day this petition was filed, Judge Edmonds granted the petition to intervene and ordered all interested to show cause on a day certain why all actions already taken by the court or by Carpenter pursuant to the prior orders should not be ratified, confirmed and approved.

Shortly after July 23d, various persons—stockholders, policyholders, or directors of the old company—in response to the order to show cause filed complaints in intervention. All requested that the prior orders be set aside, attacked the provisions of the Insurance Code under which the orders had been made as unconstitutional, and attacked the rehabilitation plan as being unfair, discriminatory, and illegal.

On August 11, 1936, Judge Willis, judge of the superior court of Los Angeles county, made an "Order Appointing Conservator and Restraining Order". It is therein recited that on July 22d a petition of Carpenter to be appointed conservator was filed and granted by Judge Edmonds; that since that date Judge Edmonds had advised the court that he is the holder of a life policy in the old company in sum of \$5,000; that because of the doubt as to Judge Edmonds' qualifications because of the ownership of such policy it appears advisable to the court that it should rehear and reconsider the petition. The court thereupon decreed that the order of July 22d of Judge Edmonds appointing Carpenter conservator be "ratified, approved and confirmed; and that said order and said restraining order be and they are now hereby adopted and continued in force". In addition, however, the court ordered that Carpenter "be and

he is hereby appointed conservator of said respondent corporation, its business, assets, and affairs, and that said commissioner be and he is hereby ordered to take possession forthwith of all the books, records, property, real and personal, and assets, wheresoever situated of said respondent corporation, and to conduct, manage, transact and [fol. 1517] operate the business and affairs of respondent as a going insurance business, and to do any and all things which the petitioner may deem necessary and appropriate for that purpose". The court also ordered Carpenter as conservator to work out a rehabilitation and reinsurance plan, and issued the requested restraining orders. The court concluded its order with the statement that the making of this new order did not constitute a revocation of the orders made by Judge Edmonds nor a ruling with respect to his qualifications. It is to be noted that by this order of August 11th, Judge Willis not only purported to confirm and ratify the prior order of Judge Edmonds, but also made his own order appointing Carpenter conservator of the old company.

On August 13th, Carpenter, as conservator, petitioned to be appointed liquidator, which petition so far as the record here presented is concerned, never has been acted upon. On August 14th, Carpenter filed a "Petition with Respect to Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement", in which after reciting the prior steps taken and the doubt in reference to the validity of the orders made by Judge Edmonds, Carpenter asks for confirmation of his prior acts, and authorization to proceed. Apparently no further steps were taken in reference to this petition.

Thereafter the commissioner and the new company filed answers to the many pleadings filed by interveners and others. Between August 14th and August 29th, many other parties and groups of parties responded to the order to show cause and filed objections to the confirmation of the plan. On August 29th, the trial court through Judge Willis made and entered its order granting the petition of the new company to intervene as of the date of the filing of its petition, July 23, 1936, and adopting and ratifying the Edmonds' order to show cause. Thereafter many other parties appeared and filed pleadings objecting to the plan of rehabilitation.

We now come to the start of the specific proceedings ultimately resulting in the specific order here sought to be reversed. On September 25, 1936, Carpenter as conservator filed a "Petition for Approval of Rehabilitation and Reinsurance Agreement". By this petition the commissioner, pursuant to the orders of Judge Willis of August 11th, sought approval of the rehabilitation plan worked out by him. The petition recites substantially the same facts already reviewed in connection with the similar petition filed on July 22, 1936. It is further recited that pursuant to court order Carpenter as conservator has taken possession of the business and assets of the old company, and has carried on the business of the old company; that it is in the interests of all concerned to preserve the good will, the agency organization and the going concern value of the old company; that in order to accomplish these ends the commissioner organized the new company and on July 22, 1936, purchased all its stock with \$3,000,000 of old company funds, and on the same date transferred to the new company all the other assets of the old company except the stock of the new company and certain described claims; that "since said July 22, 1936, your petitioner, as conservator, and through the agency and instrumentality of the new company, has continued to carry on and conduct the business and affairs of the old company, and to preserve, so far as possible, its good will, [fol. 1518] going concern value, and agency organization." The petitioner also recites that as conservator he has given diligent study and attention to the problem of determining what steps would best serve the interests of all concerned; that he has invited the presentation of plans and offers; that he has carefully examined and considered all plans and suggestions submitted to him for the rehabilitation of the old company, or the reinsurance of its business; that "in the opinion of your petitioner no plan of rehabilitation or offer of reinsurance has been presented which affords to the policyholders of the old company the measure and the opportunity of protection provided by that contained in the proposed Rehabilitation and Reinsurance Agreement . . . under which your petitioner proposes to rehabilitate the old company . . . Your petitioner accordingly submits said proposed agreement, and asks approval thereof". Petitioner asks for an order directing all interested to show cause why the proposed agreement should not be approved,

and why all the prior acts of the commissioner should not be ratified, confirmed and approved. On the day this petition was filed, the court, per Willis, judge, issued its order to show cause, returnable October 19, 1936. The order prescribed in detail the nature of the notice of the hearing required to be given. Pursuant thereto, notice, in a form prescribed by the court, was posted in three designated public places in Los Angeles; published on ten consecutive days in certain prescribed newspapers in Los Angeles, San Francisco, and Sacramento; mailed to the insurance commissioner of every state in which the old company did business; and mailed to every policyholder and stockholder of the old company.

On October 8, 1936, Judge Willis issued an order amending, nunc pro tunc, the orders of July 22d and August 11th, appointing the conservator. The amended order stated more fully the facts before the court at the time the original orders were made.

The hearing on the order to show cause of September 25th, started October 19th and proceeded continuously to December 4, 1936. At that hearing many persons representing various interests were represented. During the hearing, and prior thereto, various persons and groups proposed plans of rehabilitation different from that proposed by the commissioner. One such plan was proposed by L. M. Gianini, who suggested the liquidation of the old company through a sale of the assets and business to him. This plan was endorsed by the insurance commissioner of the state of Washington, by two large groups of policyholders, and by various individual policyholders. Appellant Neblett suggested a plan, as did intervener Hess, and others. At the hearing full opportunity was given to all who appeared to submit evidence and argue their contentions. On December 4, 1936, Judge Willis made an order approving the plan of rehabilitation proposed by the commissioner. The order recites that this plan makes adequate provision for each class of policyholders, the creditors, and stockholders of the old company; that this plan is fair and equitable; that the plan does not discriminate unfairly or illegally in favor of any class of policyholders; that the intangible assets of the old company were worth "several million dollars"; that the approved plan is designed to preserve and conserve these intangible assets; and that if the old company were dis-

solved and its assets sold such assets would be of substantially less value than if sold as a part of a going concern. The court not only approved the commissioner's plan, but [fol. 1519] also ratified, confirmed and approved all prior steps taken by him. It is from this order of December 4th that these appeals are presented. In the court below several hundred policyholders appeared in person or by counsel. Of this large number, only four have appealed. In L. A. No. 16182, the three appellants are Neblett, Bettin, and Dickinson, while in L. A. No. 16222, on the same record, the appellant is MacDonald. Appellant Neblett is the owner of a life policy in the old company, the other three appellants being owners of non-can policies in that company.

The plan approved by the trial court on December 4, 1936, is an extremely detailed plan, only the essential features of which need be referred to in this opinion. Some of its features have already been mentioned. The new company had already been organized by the commissioner as his corporate agent with a capital of \$3,000,000 provided from the assets of the old company, all the new company's stock being held by the commissioner as conservator of the old company. As already mentioned the approved plan provided for the transfer to the new company of all of the assets of the old company with the exception of the new company's stock and certain described claims. The new company agrees to assume without change all of the obligations of the old company under all existing policies, except non-can policies. As to these last-named policies, the new company agrees to assume all obligations thereunder at old premium rates on a reduced benefit schedule, and agrees to restore further benefits and possibly full benefits to such policyholders from certain designated sources of income of the new company. The proposal contemplates that in due course the commissioner will be appointed liquidator of the old company, and in that capacity will receive, liquidate, and pay all claims against the old company from the old company's assets not transferred to the new company (including the new company's stock), and from certain moneys furnished to the liquidator by the new company as provided in the agreement. The plan does not require that old company policyholders are compelled to accept the offer of the new company to assume the old company's policies. Each policyholder is given a reasonable time to elect whether to accept

or reject the offer. A dissenting policyholder is required to file a claim for damages with the liquidator of the old company and the new company agrees to pay such allowed claims in the manner and to the extent as provided in the agreement. The plan also provides that the commissioner, either as conservator or liquidator, shall continue to hold all the stock of the new company as a protection to all old company policyholders. Ultimate mutualization, in the event the policyholders so elect is also provided for. The trial court reserves jurisdiction over the entire proceeding.

That, in substance is the plan approved by the lower court.

Before considering the contentions of the parties in reference to the legality of the approved plan, it is first necessary to pass upon certain preliminary contentions.

[3] Respondents point out that the appeals are all from the order of December 4th and contend that the proper appeal record consists only of those pleadings and orders filed on and since September 25th, the date of the filing of the petition ultimately resulting in the order appealed from. It is apparently the contention of respondents that the filing [fol. 1520] of the September 25th petition constituted the institution of a new proceeding separate and apart from any steps theretofore taken, and that if appellants desired prior orders reviewed, separate appeals should have been taken therefrom. With these contentions, we do not agree. It is true that on these appeals we are solely concerned with the validity of the order of December 4th. But it is also true that when the commissioner files a petition to be appointed conservator and asks authority to work out a rehabilitation plan, he has instituted a proceeding which is but one proceeding until the proposed plan is ultimately passed upon. The intervening orders are merely preliminary orders. Any other construction of the provisions of the Insurance Code would result in interminable delays in any proceeding thereunder, and would defeat the obvious purpose of the legislature in adopting the provisions of that code here involved. We agree with appellants that the judgment roll, and therefore the proper appeal record, starts with the petitions and orders of July 22, 1936.

[4] We also agree with appellants that all of the orders made by Judge Edmonds, including the order appointing Carpenter conservator on July 22, 1936, were void by rea-

son of his disqualification. It is well settled that the ownership of a life insurance policy, when such ownership gives the judge an interest in the funds of the insurance company, disqualifies such judge from participating in or deciding any cause or proceeding to which the insurance company is a party. (New York Life Ins. Co. v. Sides, [Tex.] 101 S. W. 1163; Sovereign Camp, Woodmen of the World v. Alford, [Ala.] 89 Sou. 528; Sovereign Camp, Woodmen of the World v. Hale, 120 S. W. 539). The rule of these cases applies with particular force to the instant case. Here the petitions filed on July 22d, disclosed on their face that the commissioner was seeking a special form of liquidation of the insurance company, and that in such proceeding there was involved a conflict of interest between life policyholders and non-can policyholders. We can see no material legal difference between ownership of a policy entitling the recipient to dividends, and ownership of stock in a corporation. Ownership of stock, according to the overwhelming weight of authority, disqualifies the judge. (48 A. L. R. 617). We are not without authority in this state. (Adams v. Minor, 121 Cal. 372; Hall v. Superior Court, 198 Cal. 373; City of Vallejo v. Superior Court, 199 Cal. 408). All three of these cases were decided before subdivision two of section 170 was added to the Code of Civil Procedure expressly making stock ownership a ground of disqualification, and were decided under the general "interest" provisions of that section. It therefore follows that by reason of his ownership of the life policy in the old company, all orders made by Judge Edmonds were void. [5] This holding, however, contrary to the contention of appellants, in no way affects the validity of any of the subsequent proceedings. The validity of the subsequent proceedings is not dependent on the validity of any order made by Judge Edmonds. The subsequent proceedings before Judge Willis stand by themselves independently of the prior orders. In fact, the holding that all of the orders made by Judge Edmonds were void, does not even constitute a holding that the taking possession of the assets of the old company by Carpenter on July 22d without a prior valid court order, was unlawful. Not only were all the acts performed by Carpenter, including the taking possession of the assets of the old company, [fol. 152i] and the organization of the new company, after a full hearing ratified, confirmed and approved by the valid

orders of August 11th and of December 4th, but also the Insurance Code confers the right on the commissioner to take possession of the assets of an insolvent insurance company without a prior court order. Section 1013 of that code confers on the commissioner, whenever it shall appear to him that any insurance company is in such condition that its further transaction of business will be hazardous to its policyholders or creditors, the power to take summary possession "without notice, and before applying to the court for any order." Similar provisions for summary seizure exist in the Bank Act and Building and Loan Act. These sections have uniformly been sustained against the claim of illegal seizure. (State Savings etc. Bank v. Anderson, 165 Cal. 437; North American Building etc. Ass'n v. Richardson, 6 Cal. [2d] 90). The petition for appointment as conservator, containing proper allegations, was filed July 22d. On that date, Carpenter took possession of the assets of the company. This he could lawfully do without court order. He thereupon organized a new company with a name similar to that of the old company as a corporate agent to assist him in carrying on the business of the old company. This is alleged in the petition of September 25th, and we must assume that such allegation was supported by evidence. That Carpenter acted advisedly in forming the new corporation is amply demonstrated, when the nature of the problem facing him is considered. He was in possession of the assets and business of a company that was doing business not only in California, but also in many other states. These assets totalled over \$200,000,000. The company was technically insolvent as that term is defined in the Insurance Code, but by no means bankrupt. The old company possessed an agency organization, good will, and a going concern value which the court holds was worth several millions of dollars. The moment Carpenter took possession of the company its right to do business in this and other states ceased. Obviously if this cessation of business continued for any appreciable period the intangible assets already mentioned would have been irreparably lost to the injury of all concerned. It was obvious to him that these assets could be salvaged if the business of the old company could be continued during the rehabilitation period. Faced with this emergency, he formed the new company and purchased all of its stock with assets of the old company, to carry on

such business during that period. He did this after first filing a petition setting forth in full the reasons for his proposed action. It is true that he also secured an order of court approving such proposed action, and it is also true that such approval was unavailing, the order being void. But as soon as the fact that the order was void was discovered, on August 11th, he secured a new order appointing him conservator, and approving everything he had done in connection with the formation of the new company. We must assume that the court below thoroughly investigated this phase of the situation, and found the acts were reasonably necessary. We find no irregularity or illegality in this phase of the transaction.

Turning now, directly, to a consideration of the validity of the order of December 4th, it is appellants' main contention that such order must be reversed for the reason that the judgment roll discloses that it was not preceded by findings of fact and conclusions of law. It is the theory of appellants that the proceeding here involved is an ordinary civil action and therefore governed by the provisions of sections 632 and 633 of the Code of Civil Procedure. Predicated on this basic premise, appellants rely on the rule that the requirement of findings in these sections is mandatory, and that failure to make them constitutes prejudicial and reversible error. This is undoubtedly the law, if such findings are necessary and have not been waived. (*Estate of Pendell*, 216 Cal. 384; *Williams v. Wren*, 88 Cal. App. 607; *Frascona v. Los Angeles Ry. Corp.*, 48 Cal. App. 135.)

[6] Assuming that findings were required in the present proceedings, a point later to be discussed, and assuming without deciding that the many recitals in the order are not sufficient to constitute findings (but see *Petition of Los Angeles Trust Company*, 158 Cal. 603), we are nevertheless of the opinion that appellants have not presented a proper case where the rule above discussed is applicable. These appeals have been taken on the judgment roll. The properly authenticated record does not disclose that findings were not waived. From an early date it has been held in this state that on a judgment roll appeal the mere nonappearance of findings where required by statute does not necessarily establish error. The statutes requiring findings recognize that this requirement may be waived. (See sec. 634, Code Civ. Proc.). Error is never presumed, but must be affirma-

tively shown. Where findings do not appear, and are required on a judgment roll appeal it will be conclusively presumed, in the absence of a proper record showing the contrary, in support of the judgment, that such requirement was waived. (*Mulcahy v. Glazier*, 51 Cal. 626; *Cushing-Wetmore Co. v. Gray*, 152 Cal. 118.)

[7] Appellants, while recognizing the existence of this rule, contend that the record discloses that findings were demanded and refused, and exceptions noted. To support this contention they refer to a purported colloquy between certain counsel appearing below and the trial judge following the oral opinion of the trial judge. The purported oral opinion and conversation are printed at the end of the last volume of the transcript. An examination of the transcript discloses that the comments referred to are not properly made part of the appeal record. The purported comments are not certified, appearing in the transcript after the formal certification by the clerk. This portion of the purported record is not authenticated nor certified in any way. Appellants seek to remedy this defect by the affidavit of the attorney appearing for appellant Neblett in the court below, attached to appellants' reply brief, to the effect that the trial court's opinion and conversation were copied from a certified copy of the court reporter's transcript. Obviously the defect in the record cannot be cured in that fashion. Assuming that the portion of the purported transcript referred to is capable of the interpretation that the trial court refused to make findings, and that appellants did not waive them, this court cannot properly consider that portion of the purported record. It therefore follows that it must be conclusively presumed in support of the judgment, that findings were waived.

[8] Another complete answer to the present contention is that the proceeding here involved is a special proceeding in which findings are not required. Section 22 of the Code of Civil Procedure defines an "action" as "an ordinary proceeding in a court of justice by which one party prosecutes another for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense". Section 23 provides that "every other remedy is a special proceeding". Under these definitions the proceedings here involved are obviously

special proceedings. The commissioner was not prosecuting an action "for the enforcement or protection of a right", or for the "redress or prevention of a wrong", or for the "punishment of a public offense". The proceeding was had under sections 1010 to 1061 of the Insurance Code which specially deal with the rehabilitation and liquidation of insurance companies. Those sections set up a comprehensive statutory scheme to accomplish those results. The proceeding is not one in which another party is prosecuting another party at all. It is simply a proceeding in which the state is invoking its power over a corporate entity, permitted by the state to engage in a business vitally affected with the public interest upon condition of continuing compliance with the requirements provided by the State. It is not a controversy between private parties but a proceeding by the state in the interest of the public.

Once it is determined that the proceeding is a special proceeding, it follows that since the provisions of the Insurance Code in question do not require findings, none are required by sections 632 and 633 of the Code of Civil Procedure. Findings are required and necessary only where a statute so provides. (Matter of Danford, 157 Cal. 425.) Sections 632 and 633 of the Code of Civil Procedure are found in part II of that code which deals with "Civil Actions". By virtue of those sections findings are required, unless waived, in all civil actions. But those sections have no application to special proceedings, some of which are covered in part III of the code. As to special proceedings, findings are only required when the statute so requires. As to many special proceedings findings are required either by direct provision, or indirectly, by reason the statutes dealing therewith incorporating that portion of part II of the code that includes sections 632 and 633. Thus, to give but one example, findings are required in probate proceedings by virtue of section 1230 of the Probate Code, formerly sections 1716 and 1717 of the Code of Civil Procedure. However, when the statute dealing with a particular special proceeding is silent as to the requirement of findings, none is required. Thus in a proceeding for change of name findings are not required. (Petition of Los Angeles Trust Co., 158 Cal. 603). One of the leading cases is Matter of Danford, 157 Cal. 425, where it was held that since the sections of the Code of Civil Procedure dealing with the procedure

to be followed in disbarment proceedings did not directly or indirectly provide for findings, none were required. A reading of the provisions of the Insurance Code here involved demonstrates that there is neither a direct requirement of findings nor are sections 632 and 633 of the Code of Civil Procedure incorporated by reference. It therefore follows that in the present special proceeding findings are not required.

As already stated, the proceedings here under review were taken under sections 1010 to 1061 of the Insurance Code, adopted in 1935. While many of the provisions of that code were merely reenactments of existing law, several of the provisions contained therein in reference to the rehabilitation of insolvent insurance companies were new sections in this state, having been copied, substantially, from similar provisions in the New York insurance law. (Cahills Con. Laws of New York, 1931-1935 Supp., chap. 30, p. 320). In the court below many of those attacking the commissioner's [fol. 1524] plan, including several of the appellants, contended that the provisions of the Insurance Code dealing with rehabilitation of insolvent insurance companies were unconstitutional in that they violated the due process, equal protection of the law, and the contract clauses of the federal Constitution. On the oral argument appellant Neblett conceded, for himself at least, that the provisions in the code are valid and constitutional, but contended, as do several of the other appellants, that the plan and procedure approved by the court below are violative of the federal Constitution. The two phases of the problem are interrelated, and will be considered together.

It seems to be the view of several of the appellants that if the Insurance Code permits the reorganizing of an insolvent company by the organizing of a new company, instead of requiring outright liquidation, the sections are invalid. It is also argued that the approved plan is invalid in that it unfairly and unlawfully discriminates between life policyholders and non-can policyholders. These contentions are without merit. [9] It is no longer open to question that the business of insurance is affected with a public interest. The state has an important and vital interest in the liquidation or reorganization of such a business. (Mitchell v. Taylor, 3 Cal. [2d] 217; German Alliance Ins. Co. v. Kansas, 233 U. S. 389). Neither the company nor a policyholder has the

inviolable rights that characterize private contracts. The contract of the policyholder is subject to the reasonable exercise of the state's police power. The only restriction on the exercise of this power is that the state's action shall be reasonably related to the public interest and shall not be arbitrary or improperly discriminatory. Section 1010 et seq. of the Insurance Code deal with rehabilitation and liquidation of insurance companies in financial difficulties, and with the reinsurance of their business. This phase of state control is extremely important. Insurance is a public asset, a basis of credit, and a vital factor in business activity. Obviously, if an insurance company gets into financial difficulties, something must be done to remedy the situation. Either the company must be liquidated, and its assets distributed to its creditors, thus immeasurably injuring many of its policyholders who are thus deprived of insurance protection, or the business must, if possible, be rehabilitated. The public has a grave and important interest in preserving the business if that is possible. Liquidation is the last resort. (*National Surety Corporation v. Nantz*, [Ky.] 90 S. W. [2d] 385; *In re Globe and Rutgers Fire Ins. Co.*, 266 N. Y. S. 29; *In re Bond and Mortgage Guarantee Co.*, 283 N. Y. S. 623). The provisions of the California Insurance Code recognize the public interest involved and provide for rehabilitation of such companies, if possible. Section 1011 provides for the filing by the commissioner of a petition for appointment as conservator whenever, among other things, it is disclosed after examination that the company is in such a condition that its further transaction of business would be hazardous to its policyholders, or creditors, or to the public; that when the commissioner files a verified petition, as was done here, together with a copy of the last report of examination showing the company is insolvent, the trial court shall issue its order vesting the commissioner with title to all the assets of the company and directing the commissioner as such conservator to conduct the business. Section 1012 provides that the order above mentioned shall remain in force until it shall appear to the court that the company can properly resume the conduct of its business. Section 1013, already discussed, gives the commissioner power of summary seizure [fol. 1525] without notice or prior court order. Section 1015 requires the commissioner immediately after a summary seizure to institute proceedings under section 1011.

Section 1016 provides that if after his appointment as conservator, it shall appear to the commissioner that further efforts to proceed under section 1011 "would be futile" he may apply for an order to liquidate the company. Section 1020 confers on the court power to issue certain restraining orders in connection with granting orders under sections 1011 or 1016. The sections immediately following provide for the procedure to be followed in handling and disposing of claims in the liquidation proceedings. Section 1035 confers on the commissioner power to employ special deputy commissioners, clerks and assistants "and to give to each of them such power as may by him be deemed necessary". Section 1037 defines the wide powers conferred on the commissioner as conservator or liquidator. Section 1043 confers on the commissioner, either "as conservator or as liquidator", subject to the approval of the court the power to "mutualize or reinsure the business", of the company or to "enter into rehabilitation agreements". Section 1057 makes the commissioner in all proceedings under the provisions of the code, the trustee for the benefit of all creditors and other interested parties.

[10] Under the statutory plan thus embodied in the Insurance Code, the state, acting under and within its police power, has provided that the commissioner, when an insurance company is in financial difficulties, shall first be appointed by the court as conservator. As such, it is his duty to operate the company and to try to remove the causes leading to its difficulties. If this cannot be done, then he must attempt to rehabilitate the business of the company as conservator or liquidator, by entering into, with court approval, either reinsuring or rehabilitation agreements. Only if this cannot be done and further efforts "would be futile" should liquidation be resorted to.

[11] In the present case the merits of the legislative policy of rehabilitation if possible instead of liquidation is well illustrated. The old company has been doing business in California since 1868. At the time the commissioner petitioned to be appointed conservator the old company was doing business in 43 states and in the District of Columbia. As of December 31, 1935, it had life insurance in force of over \$600,000,000. It had about 300,000 policyholders. Its assets were in excess of \$200,000,000. Its life insurance busi-

ness was on a sound basis and very profitable. Its difficulties were caused almost entirely by reason of inadequate reserves behind its non-can policies, which was caused by inadequate premium rates based on actuarial under-calculations. The convention examination disclosed that the old company was fundamentally sound, and that all its reserves were unimpaired, except those pertaining to the non-can policies, as to which there was a deficiency of approximately \$23,000,000. The company had intangible assets consisting of good will, going concern value, and an extensive agency organization worth several millions of dollars. All these intangible assets would be lost if the old company were liquidated. The old company was powerless to change the existing non-can policies. The contract and due process clauses prohibited the company from making any changes therein. But these prohibitions do not apply to the state acting under its police powers. Obviously, if the agency organization were to be preserved pending court approval of a rehabilitation plan, the business of the old company had to be continued. Faced with these facts the commissioner determined [fol. 1526] to organize a new company to continue the business pending the approval of a rehabilitation plan. All these steps, after a full hearing, were later approved by the court. Under the rehabilitation agreement, approved by the trial court, the new company takes over substantially all of the assets of the old company, with the exception of the new company's stock, assumes as to consenting policyholders all policies of the old company, reduced as to non-can policyholders as provided in the agreement, and assumes as therein provided, the liabilities of the old company.

This method of rehabilitation by the formation of a new company is obviously contemplated by the Insurance Code. A similar plan for the rehabilitation of National Surety Company has been sustained by various courts in a similar proceeding under the New York law upon which the California law is modeled. The superintendent of insurance of New York found the National Surety Company, a New York corporation, to be insolvent. That company, like the old company here, was engaged in a nation-wide business of great magnitude, and the company had a good will of great value. As statutory rehabilitator he proposed a plan, approved by the court, to conserve the assets by organizing a new company—the National Surety Corporation—with a capital of

\$1,000,000 and a surplus of \$3,000,000 paid in from the assets of the old company in exchange for all of the stock of the new company, which was to be held by the commissioner for the protection of all concerned. The new company was to assume a portion of the liabilities of the old, and the new company was to receive all the liquid and most desirable assets of the old. A second corporation was organized to liquidate certain mortgage securities of the old company out of certain assets transferred to it. A third corporation was organized to receive certain frozen assets of the old company, and to pay therefrom certain obligations not assumed by the other two new corporations. The plan was attacked on the ground it was beyond the power of the commissioner and was unconstitutionally discriminatory. Among other things it was held that the legislature had the power to permit rehabilitation instead of liquidation and that in working out a plan of rehabilitation a new corporation could be formed to receive the assets of the old in order to save the profitable business and good will of the old company. The New York court upheld the plan against several objections here made by appellants. (Application of People by Van Schaick, 268 N. Y. S. 88.) The New York court of appeals in *People by Van Schaick v. National Surety Co.*, 191 N. E. 521, affirmed the supreme court, appellate division, on the authority of *Matter of People (Title and Mortgage Guarantee Co. of Buffalo)*, 190 N. E. 153. In this last-entitled case many of the provisions of the Insurance Code of New York dealing with rehabilitation were upheld.

The National Surety Company rehabilitation plan was later subjected to attack in Kentucky. The courts of that state likewise upheld the rehabilitation, emphasizing the importance to all concerned of preserving the good will of the old company and of rehabilitation in place of liquidation. The Kentucky court upheld the plan against the contention of a creditor of the old company who claimed discrimination in that his debt was not assumed in full. (*National Surety Corporation v. Nantz*, [Ky.] 90 S. W. [2d] 385.)

The legality of the plan was likewise attacked in the federal courts of South Carolina. In that action it was contended, as appellant Neblett contends here, that the plan of [fol. 1527] rehabilitation amounted to a fraudulent transaction whereby the new corporation took the valuable assets of the old corporation, the latter company by this maneuver

seeking to evade its liabilities. It was contended that equity should annul the fraud. The court held that the transfer to the new company of the desirable assets of the old was in the ultimate interests of all creditors, and that thereby valuable intangible assets were saved that by liquidation would have been lost. The plan was again upheld and approved. (*Thrower v. Kistler*, 14 Fed. Supp. 217.)

In several other cases the courts have approved plans for rehabilitation of companies in which a new company was organized to carry on the business of the old. (In re Bond and Mortgage Guarantee Co., 283 N. Y. S. 623; In re New York Title and Mortgage Co., 281 N. Y. S. 715; In re Rehabilitation of Lawyers Mortgage Co., 287 N. Y. S. 625; *Gauss v. Central West Casualty Co.*, [Mich.] 253 N. W. 252.)

In the face of these many well reasoned cases, appellants contend that the Insurance Code does not permit the rehabilitation of an insolvent company by the organization of a new company. Specifically it is contended that the code merely permits rehabilitation agreements and the reinsuring of an insolvent company's business. It is urged that the plan as approved, calling as it does for a transfer of assets to a new company, is neither a rehabilitation agreement, nor a reinsurance of the old company's business. The plan as approved is called by appellants a "reorganization" of the old company, and it is urged that a reorganization is not included within the meaning of rehabilitation; that the term, "rehabilitation" necessarily implies the continuance of the old company as a going concern. The New York cases are attempted to be distinguished on the ground that section 52 of the New York law expressly permits reorganization of insurance companies, and that no similar provision exists in California. These points are without merit. An examination of the New York cases definitely discloses that they were decided under the rehabilitation sections of the New York law, and not under section 52. It is to be noted that under section 1043 of the California Insurance Code the legislature was careful to provide for the rehabilitation and reinsuring of the "business" of an insolvent company. The legislature provided for the rehabilitation of the business of the old company—not of the company itself. The code when read as a whole discloses a clear and unequivocal intent to preserve whenever possible the "business" of the insolvent company, and if to preserve such business—if to rehabilitate

such business—a new corporation must be organized, the power clearly exists.

[12] Equally untenable is the argument that the plan as approved does not call for the "reinsurance" of the business of the old company. Appellants contend that the term "reinsurance" has but one meaning—one company reinsuring the risks of another company, the latter company still remaining liable on the original risk. Reference is made to section 620 of the Insurance Code containing such a definition. But the term has likewise another well recognized meaning—that is, a contract by which one company (the new company here) takes over the insurance risks of another company (the old company here) and becomes substituted as insurer in the place and stead of the original insurer. (33 Cor. Jur. 58, sec. 736; *People v. American Cent. Ins. Co.*, [Mich.] 146 N. W. 235.) Inasmuch as section 1043 of the Insurance Code confers the right of reinsuring in event of liquidation, obviously the term as used in that [fol. 1528] section was not intended to be limited solely to its indemnification meaning, but also includes the broader meaning above discussed.

[13] Appellants attack the plan as being unlawfully discriminatory, in that life policyholders are taken into the plan on more liberal terms than non-can policyholders. In the first place it is to be noted that every policyholder is given his election to accept or reject the plan. Every policyholder who consents to the plan clearly enters into a novation with the new company. Having done so, such consentor cannot complain that he has been unfairly treated. (*Mulcahy v. Baldwin*, 216 Cal. 517.) As to the dissenter to the plan, it is clear that he has no legal cause for complaint simply because the commissioner determined to rehabilitate rather than liquidate. The United States Supreme Court has unequivocally determined that a creditor or policyholder has no vested right in liquidation in event of insolvency. There is no property right, in the constitutional sense, in any form of remedy. (*Doty v. Love*, 295 U. S. 64; *Gibbes v. Zimmerman*, 290 U. S. 326; see, also, *Daniel v. Layton*, 75 Fed. [2d] 135.) All that the law requires as to a dissenter is that he receive the liquidated value of his contract rights without unreasonable delay—he has no vested right to immediate payment. In *Doty v. Love*, supra, page 71, the United States Supreme Court in reference to a bank reorganization stated:

"The argument is made that some of the assets of the old bank are placed at the risk of the business of the new one. The finding is that collections are made more promptly by a going concern than by one in liquidation . . . Adequate precautions are embodied in the plan to assure the enjoyment of these benefits by the creditors and not by others. It is one of the terms of the decree that none of the profits of the business may be used for the new shareholders until every dollar's worth of assets turned over by the Superintendent has been paid to the creditors or delivered to the pool."

All the dissenter is entitled to is the equivalent of what he would receive on liquidation. Appellant Bettin urges that his remedy against the old company is ineffective because that company has conveyed all its assets of value to the new company. The record shows the contrary. It discloses that as trustee for all creditors of the old company, including dissenters, the commissioner holds all of the stock of the new company, the agreement of the new company to pay him certain sums equivalent to the reserves established on policies whose owners dissent, and the agreement of the new company to pay over to him for the benefit of all creditors of the old company portions of its future earnings. There is nothing in the judgment roll to indicate the value of these assets. The record is also silent as to what the policyholders would have received in liquidation. All that the judgment roll discloses is that under the approved plan the assets are far in excess of what they would be on liquidation. On these appeals, without the evidence before us, in support of the judgment, we must assume that evidence was introduced on these vital points, and that such evidence demonstrated that dissenters under the plan will receive as much, or more, as they would have received on liquidation. The order appealed from contains a recital that adequate provision is made in the plan for each class of policyholder. We must assume that such recital was amply supported by evidence.

It is true that the approved plan treats consenting life policyholders differently from consenting non-can policyholders, but if they dissent they are treated the same—they are allowed and will be paid the amount allowed by law as the measure of damages from the assets of the old company above enumerated.

Moreover, the record demonstrates that under the circumstances here existing the difference in treatment was justified. The life policyholders, and the commercial health and accident policyholders were paying adequate premiums for their insurance and these phases of the old company's business were highly profitable. The non-can policyholders were not paying adequate premiums, and this fact was the primary cause of the difficulties of the old company. The non-can policies were draining the old company to disaster. If any plan of rehabilitation was to succeed it was imperative that the integrity of the life business be preserved in order to earn profits for the benefit of all concerned, including the non-can policyholders. Continued profits from the life business, and from the profitable accident and health business, furnished the only sources from which full contract benefits to non-can policyholders could ever be resumed. Under the plan 10 per cent of the net earnings of participating life policies, nearly all the net earnings of the nonparticipating life policies, and nearly all the net earnings of the commercial accident and health policies are made available for the ultimate restoration of full benefits to non-can consenters, and for full payment of all claims of non-can dissenters. It is quite clear that since the old company was insolvent, the new company could not assume all the liabilities of the old company or it too would be insolvent. Appellants urge, however, that the reduction in assumption should have been equalized. None of the evidence produced over a six weeks' period is before us. The evidence might well have shown, and the conclusion seems to us quite a logical one, that if life policies were reduced so as to be equalized with the non-can policies, such reduction would dangerously impair the possibility of writing new life insurance which would ultimately disorganize and destroy the agency organization. The evidence might well have shown (and probably did) that such reduction in life policies would cause lapses and surrenders in such policies, particularly of those still insurable in other companies, leaving only undesirable risks accepting the reduction. If the evidence showed these facts it might well be that the evidence also showed that equalization would produce less for the non-can policyholders than the plan adopted. In other words, the difference in treatment can be justified on the theory that such difference was necessary not only to preserve life policyholders' rights, but also the rights of

non-can policyholders. Other grounds for the difference in treatment readily occur to us. Under such circumstances we must assume that the holding of the trial court that the plan does not unfairly discriminate was supported by the evidence.

[14] Appellants Neblett and MacDonald next argue that the approved agreement permits a fraudulent conveyance in violation of sections 3439 and 3442 of the Civil Code. Under the first section "every transfer of property . . . and every judicial proceeding taken, with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor . . ." Section 3442 [fol. 1530] provides that generally "the question of fraudulent intent is one of fact and not of law; . . . provided, however, that any transfer or incumbrance of property, made or given voluntarily, or without a valuable consideration, by a party while insolvent or in contemplation of insolvency, shall be fraudulent, and void as to existing creditors." The sections, obviously, have no application to the proceedings here involved. We are not here presented with a case where an insolvent individual or corporation by private contract conveys away his or its assets with intent to defraud creditors. Here the transfer was made pursuant to a valid statute after court approval. Clearly there can exist no intent to defraud when the transfer is made under the terms of a valid statute and pursuant to a court order. The old company did not convey its assets to the new company while insolvent. The commissioner, as already held, validly took possession of the assets of the old company on July 22, 1936. On August 11, 1936, he was validly appointed conservator, his prior acts approved, and his title to the assets expressly confirmed. By operation of law, pursuant to the express terms of the statute, title to all of the assets of the old company became legally vested in the commissioner as trustee for all creditors. The transfer of these assets from the commissioner to the new company occurred pursuant to statutory authority and order of court.

These two appellants strongly rely on *Shapiro v. Wilgus*, 287 U. S. 348. The case merely serves to emphasize the distinction here involved. In that case there was involved a conveyance of his assets by a harassed individual to a corporation for the purpose of obstructing his creditors.

It was conceded that the conveyance was made to hinder and delay his creditors. In the present case the conveyance was made after a full court hearing, by court approval and order, pursuant to the terms of a valid statute. The conveyance to the new company was not made by the insolvent debtor, but by the commissioner, a state official, and was made, as held by the court, for the purpose of preserving and protecting the rights of creditors. All of the cases cited by appellants relate to private transactions, and are not in point.

(15) Appellant MacDonald contends that the conveyance to the new company was void because Carpenter was not validly appointed liquidator before making the conveyance. It will be remembered that Judge Willis appointed Carpenter conservator on August 11th, but did not appoint him liquidator. The argument of appellant MacDonald is predicated on the contention that to rehabilitate a company the commissioner must first be appointed liquidator under section 1016 of the Insurance Code. That section has nothing to do with the power to rehabilitate. That is expressly covered by section 1043 providing that "the commissioner, as conservator or liquidator", may, with court approval, enter into rehabilitation agreements.

(16) Appellants next urge that the order of December 4th is void because the commissioner did not secure a valid permit for the issuance of the stock of the new company. It is contended that under sections 820-860 of the Insurance Code an insurance company must secure from the commissioner a permit to issue stock. It is stated that the commissioner at no time secured a permit from himself as commissioner to himself as conservator, but that the only permit secured was from himself to himself as liquidator. To support this contention one of the appellants attaches to his brief what purports to be a permit from himself as commissioner to himself as liquidator, authorizing the new [fol. 1531] company issue, and states, without reference to the record, that this was the only permit issued or secured. To state the contention is to answer it. The law does not require idle acts. We doubt whether the provisions of the Insurance Code requiring the securing of a permit from the commissioner for the issuance of stock apply to the commissioner himself, where court approval of the issuance

is contemplated and secured. In the second place the record does not support appellants' contention. The record does not disclose that the permit set forth in the brief was actually issued, nor that that permit was the only one secured. If appellants desired to raise this point it was their duty to present a proper record to this court. They have elected to appeal on the judgment roll. All intendments are in support of the order appealed from. If a permit from the commissioner to himself as conservator was required, in support of the order, we must conclusively presume that such permit was secured.

[17] Appellants MacDonald and Neblett urge that section 1043 of the Insurance Code, and the plan as approved, are violative of section 13 of Art. XII of the state Constitution which provides: "The state shall not, in any manner, loan its credit, nor shall it subscribe to or be interested in the stock of any company, association, or corporation." Relying on *Mitchell v. Taylor*, 3 Cal. (2d) 217, where it was held that the insurance commissioner in taking charge of insolvent companies is a state officer acting on behalf of the state, it is contended that since the commissioner as conservator has subscribed to all of the stock of the new company, the state has so subscribed and the Constitution violated. Of course the insurance commissioner is a state officer, and of course the state has an interest in rehabilitating insolvent insurance companies, but that interest is not a vested interest as is contemplated by the above constitutional provision. Section 1057 of the Insurance Code, above referred to, expressly provides that in all proceedings thereunder the commissioner acts as trustee for the benefit of all of the creditors of the insolvent company. It is quite clear that the commissioner by subscribing to the stock of the new company has not loaned the credit of the state to the new company. Not a penny of state money has gone into the treasury of the new company. No liability under the agreement is imposed on the conservator either in his official or personal capacity. There was no loan of credit at all. The commissioner acting pursuant to a statute, with court approval, took certain assets of the old company and transferred them to the new company in exchange for the stock which he holds as trustee for the benefit of the creditors of the old company. Obviously, the commissioner as a state officer did not subscribe to the stock of the new

company so as to make the state a stockholder. The point is without merit.

[18] Equally untenable is appellant Neblett's contention that the use of the word, "mutual" in the name of the new company is misleading, illegal and fraudulent, in that the company is not a "mutual" company. It is to be noted that the challenged term has been in the old company's name since its incorporation in 1868. The new name was obviously chosen by the commissioner so as to conserve, so far as possible, the value of the old name. The record does disclose that the old company and the new company are stock companies, but it is also disclosed that the new company (as was the old company) is authorized to issue participating life policies as well as nonparticipating policies. The record also shows that the approved plan pro-[fol. 1532] vides for the ultimate mutualization of the company on certain designated conditions. Whether these facts justify the use of the term, "mutual" in the new company's name was a question for the consideration of the trial court.

[19] Some reference is made in the briefs and in the judgment roll to other plans of rehabilitation submitted to the trial court. The evidence as to the relative merits of the various plans is not before us. The record shows that the commissioner and the trial court studied and gave consideration to all proposed plans and found the one here approved to be the one best fitted to protect and preserve the rights of all concerned. Obviously, this court, without any evidence before it, cannot now determine the relative merits of any of the submitted plans.

We have considered all of appellants' contentions. From a careful examination of the record before us, we are satisfied that the order of the trial court appealed from should be affirmed.

The motion to strike appellant Neblett's opening brief from the files is denied; the order appealed from is affirmed.

Chief Justice Waste and Justice Edmonds being disqualified did not participate in the decision.

[fol. 1533] SUPREME COURT, STATE OF CALIFORNIA

Tuesday, September 14, 1937.

L. A. 16182

CARPENTER

VS.

PACIFIC MUTUAL LIFE INS. CO.

By the Court:

Cause and motion to strike opening brief submitted.

Waste, C. J.

Dated: September 14, 1937.

Thursday, January 6, 1938.

L. A. 16182

CARPENTER

VS.

PACIFIC MUTUAL LIFE INS. CO.

By the Court:

The petition for a rehearing is denied.

Seawell, Acting C. J.

Dated: January 6, 1938.

Seawell, J. voted for a rehearing. Waste, C. J. and Edmonds J. did not participate in the discussion or the decision on the petition for rehearing.

[fol. 1534] I, B. Grant Taylor, Clerk of the Supreme Court, State of California, do hereby certify that the preceding and annexed is a true and correct copy of Minute order of September 14th, 1937 submitting cause and motion, minute order of January 6, 1938 denying petition for rehearing and opinion of December 7, 1937 in case L. A. 16182—Carpenter vs. Pacific Mutual Life Insurance Co., as shown by the records of my office.

Witness my hand and the seal of the Court, this 9th day of February, A. D. 1938.

B. Grant Taylor, Clerk; by E. L. Blake, Deputy.
(Seal Supreme Court of California.)

1546

[fol. 1535] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1937

No. 21

ORDER ALLOWING CERTIORARI—Filed May 16, 1938

The petition herein for a writ of certiorari to the Supreme Court of the State of California is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Reed took no part in the consideration or decision of this application.

(6545)

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